

FILED MAR 3 1999

By Ken Garbino

H. B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of the Texas Board of
Plumbing and Mechanical Work and the regulation of plumbing and
mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title
132B to read as follows:

TITLE 132B. TEXAS BOARD OF PLUMBING AND MECHANICAL WORK

Art. 9150. TEXAS BOARD OF PLUMBING AND MECHANICAL WORK

Sec. 1. DEFINITION. In this article, "board" means the
Texas Board of Plumbing and Mechanical Work.

Sec. 2. BOARD. (a) The Texas Board of Plumbing and
Mechanical Work consists of 15 members as follows:

(1) one member who has at least 10 years of practical
experience as a master plumber;

(2) one member who has at least five years of
practical experience as a journeyman plumber;

(3) one member who has at least five years of
experience as a plumbing contractor;

(4) one member who has at least five years of
practical experience as a plumbing inspector;

(5) one member who is a licensed air conditioning and
refrigeration contractor;

(6) one member who has held an air conditioning and

1 refrigeration license for at least five years;

2 (7) one member who is a licensed irrigator;

3 (8) one member who installs or services boilers in
4 this state;

5 (9) one member who is an industrial boiler plant
6 operator or building engineer who operates or supervises an
7 industrial boiler in this state;

8 (10) one member who is a licensed backflow prevention
9 specialist;

10 (11) one member who is a licensed engineer who has
11 professional engineering experience in plumbing design or
12 mechanical design; and

13 (12) four members who are representatives of the
14 public.

15 (b) Members of the board are appointed by the governor with
16 the advice and consent of the senate.

17 (c) Appointments to the board shall be made without regard
18 to the race, color, disability, sex, religion, age, or national
19 origin of the appointees.

20 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
21 shall designate a member of the board as the presiding officer of
22 the board to serve in that capacity at the will of the governor.
23 The board annually shall select an assistant presiding officer and
24 a secretary-treasurer.

25 (b) The board shall hold at least two regular meetings each
26 year. The board may not hold more than four meetings each year
27 unless at least nine members of the board request the presiding

1 officer in writing to call additional meetings.

2 (c) A member of the board is entitled to a per diem as set
3 by the General Appropriations Act for each day the member engages
4 in the business of the board. A member may not receive
5 compensation for travel expenses, including expenses for meals and
6 lodging, other than transportation expenses as provided by the
7 General Appropriations Act.

8 Sec. 4. TERMS. (a) Members of the board are appointed for
9 staggered six-year terms, with five members' terms expiring on
10 February 1 of each odd-numbered year.

11 (b) A member appointed to fill a vacancy shall hold office
12 for the remainder of that term.

13 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
14 a public member of the board if the person or the person's spouse:

15 (1) is registered, certified, or licensed by a
16 regulatory agency in the field of plumbing or mechanical work;

17 (2) is employed by or participates in the management
18 of a business entity or other organization regulated by or
19 receiving money from the board;

20 (3) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization regulated by or receiving money from the board; or

23 (4) uses or receives a substantial amount of tangible
24 goods, services, or money from the board other than compensation or
25 reimbursement authorized by law for board membership, attendance,
26 or expenses.

27 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this

1 section, "Texas trade association" means a cooperative and
2 voluntarily joined association of business or professional
3 competitors in this state designed to assist its members and its
4 industry or profession in dealing with mutual business or
5 professional problems and in promoting their common interest.

6 (b) A person may not be a member of the board and may not be
7 a board employee employed in a "bona fide executive,
8 administrative, or professional capacity," as that phrase is used
9 for purposes of establishing an exemption to the overtime
10 provisions of the federal Fair Labor Standards Act of 1938 (29
11 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in the field of plumbing or
14 mechanical work; or

15 (2) the person's spouse is an officer, manager, or
16 paid consultant of a Texas trade association in the field of
17 plumbing or mechanical work.

18 (c) A person may not be a member of the board or act as the
19 general counsel to the board if the person is required to register
20 as a lobbyist under Chapter 305, Government Code, because of the
21 person's activities for compensation on behalf of a profession
22 related to the operation of the board.

23 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
24 as a member of the board or act as the general counsel to the board
25 if the person is required to register as a lobbyist under Chapter
26 305, Government Code, because of the person's activities for
27 compensation on behalf of a profession related to the operation of

1 the board.

2 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
3 for removal from the board that a member:

4 (1) does not have at the time of taking office the
5 qualifications required by Section 2 of this article;

6 (2) does not maintain during service on the board the
7 qualifications required by Section 2 of this article;

8 (3) is ineligible for membership under Section 5, 6,
9 or 7 of this article;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the
12 member's term; or

13 (5) is absent from more than half of the regularly
14 scheduled board meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority
16 vote of the board.

17 (b) The validity of an action of the board is not affected
18 by the fact that it is taken when a ground for removal of a board
19 member exists.

20 (c) If the executive director has knowledge that a potential
21 ground for removal exists, the executive director shall notify the
22 presiding officer of the board of the potential ground. The
23 presiding officer shall then notify the governor and the attorney
24 general that a potential ground for removal exists. If the
25 potential ground for removal involves the presiding officer, the
26 executive director shall notify the next highest ranking officer
27 of the board, who shall then notify the governor and the attorney

1 general that a potential ground for removal exists.

2 Sec. 9. STAFF. (a) The board shall employ an executive
3 director and administrative and clerical employees as necessary to
4 carry out the board's functions.

5 (b) The board shall develop and implement policies that
6 clearly separate the policymaking responsibilities of the board and
7 the management responsibilities of the executive director and staff
8 of the board.

9 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
10 administer and enforce:

11 (1) The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes);

13 (2) the law regulating boilers, Chapter 755, Health
14 and Safety Code;

15 (3) the law regulating environmental performance
16 standards for plumbing fixtures, Chapter 372, Health and Safety
17 Code;

18 (4) the Air Conditioning and Refrigeration Contractor
19 License Law (Article 8861, Vernon's Texas Civil Statutes); and

20 (5) the law regulating irrigators, Chapter 34, Water
21 Code.

22 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
23 a separate advisory committee on each of the following:

24 (1) plumbing;

25 (2) irrigation;

26 (3) boilers;

27 (4) air conditioning and refrigeration; and

1 (5) backflow prevention.

2 (b) The board may appoint additional advisory committees as
3 determined to be necessary by a majority of the board.

4 (c) A member of an advisory committee appointed under this
5 section serves a two-year term. An advisory committee member is
6 not entitled to compensation but is entitled to reimbursement for
7 actual and necessary expenses, including travel expenses, incurred
8 in performing duties as a member of the advisory committee.

9 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
10 separate licenses, certificates, permits, or registrations for the
11 programs under Section 10 of this article in which a license,
12 certificate, permit, or registration is issued by the board.

13 (b) The board may issue more than one type of license,
14 certificate, permit, or registration to a person under a law
15 regulated by the board if the person is qualified to hold each of
16 the licenses, certificates, permits, or registrations issued. The
17 board shall adopt rules relating to the issuance of multiple
18 licenses, certificates, permits, or registrations to a person under
19 laws administered by the board.

20 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
21 from funds appropriated to it, all necessary disbursements to carry
22 out this article and the laws and programs listed in Section 10 of
23 this article.

24 (b) The financial transactions of the board are subject to
25 audit by the state auditor in accordance with Chapter 321,
26 Government Code.

27 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file

1 annually with the governor and the presiding officer of each house
2 of the legislature a complete and detailed written report
3 accounting for all funds received and disbursed by the board during
4 the preceding fiscal year. The annual report must be in the form
5 and reported in the time provided by the General Appropriations
6 Act.

7 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
8 the executive director's designee shall develop an intra-agency
9 career ladder program. The program shall require intra-agency
10 posting of all nonentry level positions concurrently with any
11 public posting.

12 (b) The executive director or the executive director's
13 designee shall develop a system of annual performance evaluations
14 based on measurable job tasks. All merit pay for board employees
15 must be based on the system established under this subsection.

16 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
17 executive director or the executive director's designee shall
18 prepare and maintain a written policy statement that implements a
19 program of equal employment opportunity to ensure that all
20 personnel decisions are made without regard to race, color,
21 disability, sex, religion, age, or national origin.

22 (b) The policy statement must include:

23 (1) personnel policies, including policies relating to
24 recruitment, evaluation, selection, training, and promotion of
25 personnel, that show the intent of the board to avoid the unlawful
26 employment practices described by Chapter 21, Labor Code; and

27 (2) an analysis of the extent to which the composition

1 of the board's personnel is in accordance with state and federal
2 law and a description of reasonable methods to achieve compliance
3 with state and federal law.

4 (c) The policy statement must:

5 (1) be updated annually;

6 (2) be reviewed by the state Commission on Human
7 Rights for compliance with Subsection (b)(1); and

8 (3) be filed with the governor's office.

9 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
10 prepare information of public interest describing the functions of
11 the board and the board's procedures by which complaints are filed
12 with and resolved by the board. The board shall make the
13 information available to the public and appropriate state agencies.

14 (b) The board by rule shall establish methods by which
15 consumers and service recipients are notified of the name, mailing
16 address, and telephone number of the board for the purpose of
17 directing complaints to the board. The board may provide for that
18 notification:

19 (1) on each registration form, application, or written
20 contract for services of an individual or entity regulated by the
21 board;

22 (2) on a sign prominently displayed in the place of
23 business of each individual or entity regulated by the board; or

24 (3) in a bill for service provided by an individual or
25 entity regulated by the board.

26 (c) The board shall list along with its regular telephone
27 number the toll-free telephone number that may be called to present

1 a complaint about a health professional if the toll-free number is
2 established under other state law.

3 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
4 shall develop and implement policies that provide the public with a
5 reasonable opportunity to appear before the board and to speak on
6 any issue under the jurisdiction of the board.

7 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
8 maintain a written plan that describes how a person who does not
9 speak English can be provided reasonable access to the board's
10 programs. The board shall also comply with federal and state laws
11 for program and facility accessibility.

12 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
13 INFORMATION. (a) A person who is appointed to and qualifies for
14 office as a member of the board may not vote, deliberate, or be
15 counted as a member in attendance at a meeting of the board until
16 the person completes a training program that complies with this
17 section.

18 (b) The training program must provide the person with
19 information regarding:

20 (1) this article and the statutes enforced by the
21 board;

22 (2) the programs operated by the board;

23 (3) the role and functions of the board;

24 (4) the rules of the board with an emphasis on the
25 rules that relate to disciplinary and investigatory authority;

26 (5) the current budget for the board;

27 (6) the results of the most recent formal audit of the

1 board;

2 (7) the requirements of:

3 (A) the open meetings law, Chapter 551,
4 Government Code;

5 (B) the public information law, Chapter 552,
6 Government Code;

7 (C) the administrative procedure law, Chapter
8 2001, Government Code; and

9 (D) other laws relating to public officials,
10 including conflict-of-interest laws; and

11 (8) any applicable ethics policies adopted by the
12 board or the Texas Ethics Commission.

13 (c) A person appointed to the board is entitled to
14 reimbursement, as provided by the General Appropriations Act, for
15 the travel expenses incurred in attending the training program
16 regardless of whether the attendance at the program occurs before
17 or after the person qualifies for office.

18 (d) The executive director or the executive director's
19 designee shall provide to members of the board and to board
20 employees, as often as necessary, information regarding the
21 requirements for office or employment under this article, including
22 information regarding a person's responsibilities under applicable
23 laws relating to standards of conduct for state officers or
24 employees.

25 Sec. 21. SUNSET PROVISION. The Texas Board of Plumbing and
26 Mechanical Work is subject to Chapter 325, Government Code (Texas
27 Sunset Act). Unless continued in existence as provided by that

1 chapter, the board is abolished and this article expires September
2 1, 2011.

3 Sec. 22. ADMINISTRATIVE PENALTIES. (a) The board may
4 assess an administrative penalty against a person who violates a
5 provision of this article, a law administered by the board, or a
6 rule or order adopted by the board as provided by this section.

7 (b) The penalty for each violation may be in an amount not
8 to exceed \$1,000. Each day a violation continues or occurs may be
9 considered a separate violation for purposes of penalty assessment.

10 (c) In determining the amount of the penalty, the board
11 shall consider:

12 (1) the seriousness of the violation, including the
13 nature, circumstances, extent, and gravity of the prohibited acts
14 and the hazard or potential hazard posed to the health or safety of
15 the public;

16 (2) the economic damage to property or the environment
17 caused by the violation;

18 (3) the history of previous violations;

19 (4) the amount necessary to deter future violations;

20 (5) efforts to correct the violation; and

21 (6) any other matter that justice may require.

22 (d) If, after investigation of a possible violation and the
23 facts surrounding that possible violation, the executive director
24 determines that a violation has occurred, the executive director
25 may issue a violation report stating the facts on which the
26 conclusion that a violation occurred is based, recommending that an
27 administrative penalty under this section be imposed on the person

1 charged, and recommending the amount of that proposed penalty. The
2 executive director shall base the recommended amount of the
3 proposed penalty on the seriousness of the violation determined by
4 consideration of the factors set forth in Subsection (c) of this
5 section.

6 (e) Not later than the 14th day after the date on which the
7 report is issued, the executive director shall give written notice
8 of the report to the person charged. The notice shall include a
9 brief summary of the charges, a statement of the amount of the
10 penalty recommended, and a statement of the right of the person
11 charged to a hearing on the occurrence of the violation or the
12 amount of the penalty, or both the occurrence of the violation and
13 the amount of the penalty.

14 (f) Not later than the 20th day after the date on which
15 notice is received, the person charged may accept the determination
16 of the executive director made under Subsection (d) of this
17 section, including the recommended penalty, or may make a written
18 request for a hearing on the determination.

19 (g) If the person charged with the violation accepts the
20 determination of the executive director, the board shall issue an
21 order approving the determination and ordering the payment of the
22 recommended penalty.

23 (h) If the person charged requests a hearing or fails to
24 timely respond to the notice, the executive director shall set a
25 hearing and give notice of the hearing. The hearing shall be held
26 by a hearing examiner designated by the board. The hearing
27 examiner shall make findings of fact and conclusions of law and

1 promptly issue to the board a proposal for decision as to the
2 occurrence of the violation, including a recommendation as to the
3 amount of the proposed penalty if a penalty is warranted. Based on
4 the findings of fact, conclusions of law, and recommendations of
5 the hearing examiner, the board by order may find a violation has
6 occurred and may assess a penalty or may find that no violation has
7 occurred. All proceedings under this subsection are subject to
8 Chapter 2001, Government Code.

9 (i) The board shall give notice of the board's order to the
10 person charged. The notice shall include:

11 (1) the findings of fact and conclusions of law
12 separately stated;

13 (2) the amount of the penalty ordered, if any;

14 (3) a statement of the right of the person charged to
15 judicial review of the board's order, if any; and

16 (4) other information required by law.

17 (j) Within the 30-day period immediately following the day
18 on which the order becomes final as provided by Section 2001.144,
19 Government Code, the person charged with the penalty shall:

20 (1) pay the penalty in full; or

21 (2) if the person files a petition for judicial review
22 contesting either the fact of the violation or the amount of the
23 penalty or contesting both the fact of the violation and the amount
24 of the penalty:

25 (A) forward the amount to the board for
26 placement in an escrow account; or

27 (B) in lieu of payment into escrow, post with

1 the board a supersedeas bond in a form approved by the board for
2 the amount of the penalty, the bond to be effective until all
3 judicial review of the order or decision is final.

4 (k) If a person charged is financially unable to either
5 forward the amount of the penalty for placement in an escrow
6 account or post a supersedeas bond for the amount of the penalty,
7 the person may satisfy the requirements of Subsection (j)(2) of
8 this section by filing with the board an affidavit sworn by the
9 person charged, stating that the person is financially unable to
10 either forward the amount of the penalty or post a bond.

11 (l) If the person charged fails to pay the penalty in full
12 as provided under Subsection (j)(1) of this section or forward the
13 money, post the bond, or file the affidavit as provided by
14 Subsection (j) or (k) of this section, the board may forward the
15 matter to the attorney general for enforcement.

16 (m) Judicial review of the order or decision of the board
17 assessing the penalty shall be under the substantial evidence rule
18 and shall be instituted by filing a petition with a district court
19 in Travis County, as provided by Subchapter G, Chapter 2001,
20 Government Code.

21 (n) If the penalty is reduced or not assessed by the court,
22 the board shall remit to the person charged the appropriate amount
23 plus accrued interest if the penalty has been paid or shall execute
24 a release of the bond if a supersedeas bond has been posted. The
25 accrued interest on amounts remitted by the board under this
26 subsection shall be paid at a rate equal to the rate charged on
27 loans to depository institutions by the New York Federal Reserve

1 Bank and shall be paid for the period beginning on the date the
2 penalty is paid to the board under Subsection (j) of this section
3 and ending on the date the penalty is remitted.

4 (o) A penalty collected under this section shall be
5 deposited in the general revenue fund.

6 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
7 adopt rules for a law or program regulated by the board as
8 necessary to comply with any federal regulation that imposes
9 standards or requirements on that law or program.

10 SECTION 2. The Plumbing License Law (Article 6243-101,
11 Vernon's Texas Civil Statutes) is amended by adding Section 1A to
12 read as follows:

13 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
14 Act is administered by the Texas Board of Plumbing and Mechanical
15 Work in accordance with Article 9150, Revised Statutes. To the
16 extent of a conflict between this Act and Article 9150, Revised
17 Statutes, that article prevails.

18 (b) Any reference in this Act to the Texas State Board of
19 Plumbing Examiners means the Texas Board of Plumbing and Mechanical
20 Work.

21 (c) The Texas State Board of Plumbing Examiners is abolished
22 and the functions of that board are exercised by the Texas Board of
23 Plumbing and Mechanical Work.

24 SECTION 3. The Air Conditioning and Refrigeration Contractor
25 License Law (Article 8861, Vernon's Texas Civil Statutes) is
26 amended by adding Section 1A to read as follows:

27 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

1 (a) This Act is administered by the Texas Board of Plumbing and
2 Mechanical Work in accordance with Article 9150, Revised Statutes.
3 To the extent of a conflict between this Act and Article 9150,
4 Revised Statutes, that article prevails.

5 (b) Any reference in this Act to the Texas Department of
6 Licensing and Regulation, the commissioner of licensing and
7 regulation, or the Air Conditioning and Refrigeration Contractors
8 Advisory Board means the Texas Board of Plumbing and Mechanical
9 Work.

10 (c) The Air Conditioning and Refrigeration Contractors
11 Advisory Board is abolished and the functions of that board and the
12 functions, under this Act, of the Texas Department of Licensing and
13 Regulation and the commissioner of licensing and regulation are
14 exercised by the Texas Board of Plumbing and Mechanical Work.

15 SECTION 4. Chapter 372, Health and Safety Code, is amended
16 by adding Section 372.0015 to read as follows:

17 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
18 administered by the Texas Board of Plumbing and Mechanical Work in
19 accordance with Article 9150, Revised Statutes. To the extent of a
20 conflict between this chapter and Article 9150, Revised Statutes,
21 that article prevails.

22 (b) Any reference in this chapter to the Texas Natural
23 Resource Conservation Commission means the Texas Board of Plumbing
24 and Mechanical Work.

25 SECTION 5. Subchapter A, Chapter 755, Health and Safety
26 Code, is amended by adding Section 755.002 to read as follows:

27 Sec. 755.002. FUNCTIONS TRANSFERRED; BOARD ABOLISHED.

1 (a) This chapter is administered by the Texas Board of Plumbing
2 and Mechanical Work in accordance with Article 9150, Revised
3 Statutes. To the extent of a conflict between this chapter and
4 Article 9150, Revised Statutes, that article prevails.

5 (b) Any reference in this chapter to the Texas Department of
6 Licensing and Regulation, the commissioner of licensing and
7 regulation, or the Board of Boiler Rules means the Texas Board of
8 Plumbing and Mechanical Work.

9 (c) The Board of Boiler Rules is abolished and the functions
10 of that board and the functions, under this chapter, of the Texas
11 Department of Licensing and Regulation and the commissioner of
12 licensing and regulation are exercised by the Texas Board of
13 Plumbing and Mechanical Work.

14 SECTION 6. Chapter 34, Water Code, is amended by adding
15 Section 34.0015 to read as follows:

16 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.

17 (a) This chapter is administered by the Texas Board of Plumbing
18 and Mechanical Work in accordance with Article 9150, Revised
19 Statutes. To the extent of a conflict between this chapter and
20 Article 9150, Revised Statutes, that article prevails.

21 (b) Any reference in this chapter to the Texas Natural
22 Resource Conservation Commission or the Texas irrigators advisory
23 council means the Texas Board of Plumbing and Mechanical Work.

24 (c) The Texas irrigators advisory council is abolished and
25 the functions of that board and the functions, under this chapter,
26 of the Texas Natural Resource Conservation Commission are exercised
27 by the Texas Board of Plumbing and Mechanical Work.

1 SECTION 7. (a) As soon as possible after the effective date
2 of this Act, the governor shall appoint the initial members of the
3 Texas Board of Plumbing and Mechanical Work in accordance with
4 Article 9150, Revised Statutes, as added by this Act.

5 (b) A person who is serving on the day immediately before
6 the effective date of this Act as a member of the governing body of
7 an agency abolished by this Act is not eligible for appointment to
8 the Texas Board of Plumbing and Mechanical Work.

9 (c) In making the initial appointments, the governor shall
10 designate members to serve terms as follows:

11 (1) one master plumber member, one licensed backflow
12 prevention specialist member, one plumbing inspector member, one
13 irrigator member, and one public member serve for terms expiring
14 February 1, 2001;

15 (2) one journeyman plumber member, one industrial
16 boiler plant operator or building engineer member, one air
17 conditioning and refrigeration contractor member, one engineer
18 member, and one public member serve for terms expiring February 1,
19 2003; and

20 (3) one plumbing contractor member, one boiler
21 installer or servicer member, one air conditioning and
22 refrigeration license holder member, and two public members serve
23 for terms expiring February 1, 2005.

24 (d) The Texas Board of Plumbing and Mechanical Work may not
25 take any action and is not created until the day after the date the
26 last appointee to the initial board takes office. On the date of
27 its creation, the board assumes its functions and:

1 (1) the Air Conditioning and Refrigeration Contractors
2 Advisory Board, Texas State Board of Plumbing Examiners, Board of
3 Boiler Rules, and Texas irrigators advisory council are abolished;

4 (2) the obligations, rights, contracts, records and
5 other property, and personnel of, and unspent money appropriated to
6 or for, the abolished boards and council or the governing body for
7 the laws or programs transferred to the new board under this Act
8 are transferred to the Texas Board of Plumbing and Mechanical Work;

9 (3) the rules of the abolished boards and council or
10 the governing body for the laws or programs transferred to the new
11 board under this Act are continued in effect as rules of the Texas
12 Board of Plumbing and Mechanical Work until superseded by rule of
13 the new board;

14 (4) the licenses, certificates, permits, or
15 registrations in effect that were issued by the abolished boards or
16 council or the governing body for the laws or programs transferred
17 to the new board under this Act are continued in effect as
18 licenses, certificates, permits, or registrations of the Texas
19 Board of Plumbing and Mechanical Work;

20 (5) a complaint or investigation pending before the
21 abolished boards or council or the governing body for the laws or
22 programs transferred to the new board under this Act is transferred
23 without change in status to the Texas Board of Plumbing and
24 Mechanical Work;

25 (6) a contested case pending before the abolished
26 boards and council or the governing body for the laws or programs
27 transferred to the new board under this Act is transferred to the

1 Texas Board of Plumbing and Mechanical Work and actions taken in
2 the proceeding are treated as if taken by the Texas Board of
3 Plumbing and Mechanical Work; and

4 (7) any reference in a law to the abolished boards or
5 council means the Texas Board of Plumbing and Mechanical Work.

6 (e) Regardless of the changes in law made by this Act, until
7 the date that the Air Conditioning and Refrigeration Contractors
8 Advisory Board, Texas State Board of Plumbing Examiners, Board of
9 Boiler Rules, and Texas irrigators advisory council are abolished
10 as provided by this section, the boards and council continue in
11 existence and shall administer their functions under the law that
12 governed the boards and council before the effective date of this
13 Act, and the prior law is continued in effect for that purpose.

14 (f) The Texas Board of Plumbing and Mechanical Work shall
15 adopt rules under this Act not later than December 1, 1999.

16 SECTION 8. The following laws are repealed:

17 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
18 Law (Article 6243-101, Vernon's Texas Civil Statutes);

19 (2) Subchapter B, Chapter 755, Health and Safety Code;

20 (3) Section 3A, Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes); and

23 (4) Section 34.003, Water Code.

24 SECTION 9. This Act takes effect September 1, 1999.

25 SECTION 10. The importance of this legislation and the
26 crowded condition of the calendars in both houses create an
27 emergency and an imperative public necessity that the

1 constitutional rule requiring bills to be read on three several
2 days in each house be suspended, and this rule is hereby suspended.

HOUSE COMMITTEE REPORT

APR 28 PM 1:17
LEGISLATIVE

1st Printing

By Yarbrough

H.B. No. 2155

Substitute the following for H.B. No. 2155:

By Wilson

C.S.H.B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical Industries consists of 15 members as follows:

(1) one member who has at least 10 years of practical experience as a master plumber;

(2) one member who has at least five years of practical experience as a journeyman plumber;

(3) one member who has at least five years of experience as a plumbing contractor;

(4) one member who has at least five years of practical experience as a plumbing inspector;

(5) one member who is a licensed air conditioning and refrigeration contractor;

(6) one member who has held an air conditioning and

1 refrigeration license A for at least five years;

2 (7) one member who has held an air conditioning and
3 refrigeration license B for at least five years;

4 (8) one member who is a licensed irrigation installer
5 for at least ten years;

6 (9) one member who is a licensed irrigation contractor
7 for at least five years;

8 (10) one member who is a licensed backflow prevention
9 specialist;

10 (11) one member who is a licensed engineer who has
11 professional engineering experience in plumbing design or
12 mechanical design; and

13 (12) four members who are representatives of the
14 public.

15 (b) Members of the board are appointed by the governor with
16 the advice and consent of the senate.

17 (c) Appointments to the board shall be made without regard
18 to the race, color, disability, sex, religion, age, or national
19 origin of the appointees.

20 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
21 shall designate a member of the board as the presiding officer of
22 the board to serve in that capacity at the will of the governor.
23 The board annually shall select an assistant presiding officer and
24 a secretary-treasurer.

25 (b) The board shall hold at least two regular meetings each
26 year. The board may not hold more than four meetings each year
27 unless at least nine members of the board request the presiding

1 officer in writing to call additional meetings.

2 (c) A member of the board is entitled to a per diem as set
3 by the General Appropriations Act for each day the member engages
4 in the business of the board. A member may not receive
5 compensation for travel expenses, including expenses for meals and
6 lodging, other than transportation expenses as provided by the
7 General Appropriations Act.

8 Sec. 4. TERMS. (a) Members of the board are appointed for
9 staggered six-year terms, with five members' terms expiring on
10 February 1 of each odd-numbered year.

11 (b) A member appointed to fill a vacancy shall hold office
12 for the remainder of that term.

13 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
14 a public member of the board if the person or the person's spouse:

15 (1) is registered, certified, or licensed by a
16 regulatory agency in the field of plumbing or mechanical work;

17 (2) is employed by or participates in the management
18 of a business entity or other organization regulated by or
19 receiving money from the board;

20 (3) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization regulated by or receiving money from the board; or

23 (4) uses or receives a substantial amount of tangible
24 goods, services, or money from the board other than compensation or
25 reimbursement authorized by law for board membership, attendance,
26 or expenses.

27 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this

1 section, "Texas trade association" means a cooperative and
2 voluntarily joined association of business or professional
3 competitors in this state designed to assist its members and its
4 industry or profession in dealing with mutual business or
5 professional problems and in promoting their common interest.

6 (b) A person may not be a member of the board and may not be
7 a board employee employed in a "bona fide executive,
8 administrative, or professional capacity," as that phrase is used
9 for purposes of establishing an exemption to the overtime
10 provisions of the federal Fair Labor Standards Act of 1938 (29
11 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in the field of plumbing or
14 mechanical work; or

15 (2) the person's spouse is an officer, manager, or
16 paid consultant of a Texas trade association in the field of
17 plumbing or mechanical work.

18 (c) A person may not be a member of the board or act as the
19 general counsel to the board if the person is required to register
20 as a lobbyist under Chapter 305, Government Code, because of the
21 person's activities for compensation on behalf of a profession
22 related to the operation of the board.

23 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
24 as a member of the board or act as the general counsel to the board
25 if the person is required to register as a lobbyist under Chapter
26 305, Government Code, because of the person's activities for
27 compensation on behalf of a profession related to the operation of

1 the board.

2 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
3 for removal from the board that a member:

4 (1) does not have at the time of taking office the
5 qualifications required by Section 2 of this article;

6 (2) does not maintain during service on the board the
7 qualifications required by Section 2 of this article;

8 (3) is ineligible for membership under Section 5, 6,
9 or 7 of this article;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the
12 member's term; or

13 (5) is absent from more than half of the regularly
14 scheduled board meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority
16 vote of the board.

17 (b) The validity of an action of the board is not affected
18 by the fact that it is taken when a ground for removal of a board
19 member exists.

20 (c) If the executive director has knowledge that a potential
21 ground for removal exists, the executive director shall notify the
22 presiding officer of the board of the potential ground. The
23 presiding officer shall then notify the governor and the attorney
24 general that a potential ground for removal exists. If the
25 potential ground for removal involves the presiding officer, the
26 executive director shall notify the next highest ranking officer of
27 the board, who shall then notify the governor and the attorney

1 general that a potential ground for removal exists.

2 Sec. 9. STAFF. (a) The board shall employ an executive
3 director and administrative and clerical employees as necessary to
4 carry out the board's functions.

5 (b) The board shall develop and implement policies that
6 clearly separate the policymaking responsibilities of the board and
7 the management responsibilities of the executive director and staff
8 of the board.

9 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
10 administer and enforce:

11 (1) The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes);

13 (2) the law regulating environmental performance
14 standards for plumbing fixtures, Chapter 372, Health and Safety
15 Code;

16 (3) the Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes);

18 (4) the law regulating irrigators, Chapter 34, Water
19 Code; and

20 (5) the law regulating certain connections to public
21 drinking water, Section 341.033(f), Health and Safety Code.

22 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
23 a separate advisory committee on each of the following:

24 (1) plumbing;

25 (2) irrigation;

26 (3) air conditioning and refrigeration; and

27 (4) backflow prevention.

1 (b) The board may appoint additional advisory committees as
2 determined to be necessary by a majority of the board.

3 (c) A member of an advisory committee appointed under this
4 section serves a two-year term. An advisory committee member is
5 not entitled to compensation but is entitled to reimbursement for
6 actual and necessary expenses, including travel expenses, incurred
7 in performing duties as a member of the advisory committee.

8 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
9 separate licenses, certificates, permits, or registrations for the
10 programs under Section 10 of this article in which a license,
11 certificate, permit, or registration is issued by the board.

12 (b) The board may issue more than one type of license,
13 certificate, permit, or registration to a person under a law
14 regulated by the board if the person is qualified to hold each of
15 the licenses, certificates, permits, or registrations issued. The
16 board shall adopt rules relating to the issuance of multiple
17 licenses, certificates, permits, or registrations to a person under
18 laws administered by the board.

19 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
20 from funds appropriated to it, all necessary disbursements to carry
21 out this article and the laws and programs listed in Section 10 of
22 this article.

23 (b) The financial transactions of the board are subject to
24 audit by the state auditor in accordance with Chapter 321,
25 Government Code.

26 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
27 annually with the governor and the presiding officer of each house

1 of the legislature a complete and detailed written report
2 accounting for all funds received and disbursed by the board during
3 the preceding fiscal year. The annual report must be in the form
4 and reported in the time provided by the General Appropriations
5 Act.

6 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
7 the executive director's designee shall develop an intra-agency
8 career ladder program. The program shall require intra-agency
9 posting of all non-entry level positions concurrently with any
10 public posting.

11 (b) The executive director or the executive director's
12 designee shall develop a system of annual performance evaluations
13 based on measurable job tasks. All merit pay for board employees
14 must be based on the system established under this subsection.

15 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
16 executive director or the executive director's designee shall
17 prepare and maintain a written policy statement that implements a
18 program of equal employment opportunity to ensure that all
19 personnel decisions are made without regard to race, color,
20 disability, sex, religion, age, or national origin.

21 (b) The policy statement must include:

22 (1) personnel policies, including policies relating to
23 recruitment, evaluation, selection, training, and promotion of
24 personnel, that show the intent of the board to avoid the unlawful
25 employment practices described by Chapter 21, Labor Code; and

26 (2) an analysis of the extent to which the composition
27 of the board's personnel is in accordance with state and federal

1 law and a description of reasonable methods to achieve compliance
2 with state and federal law.

3 (c) The policy statement must:

4 (1) be updated annually;

5 (2) be reviewed by the state Commission on Human
6 Rights for compliance with Subsection (b)(1); and

7 (3) be filed with the governor's office.

8 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
9 prepare information of public interest describing the functions of
10 the board and the board's procedures by which complaints are filed
11 with and resolved by the board. The board shall make the
12 information available to the public and appropriate state agencies.

13 (b) The board by rule shall establish methods by which
14 consumers and service recipients are notified of the name, mailing
15 address, and telephone number of the board and the license number
16 of the responsible licensee for the purpose of directing complaints
17 to the board. The board or the responsible licensee, as
18 appropriate, shall provide for that notification:

19 (1) on each registration form, application, or written
20 contract for services of an individual or entity regulated by the
21 board;

22 (2) on a sign prominently displayed in the place of
23 business of each individual or entity regulated by the board; and

24 (3) in a bill for service provided by an individual or
25 entity regulated by the board; and

26 (4) the company name and license number of the
27 responsible licensee shall be displayed on both sides of all

1 vehicles used in conjunction with contracting or performing work
2 regulated by the Board.

3 (c) The board shall list along with its regular telephone
4 number the toll-free telephone number that may be called to present
5 a complaint about a health professional if the toll-free number is
6 established under other state law.

7 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
8 shall develop and implement policies that provide the public with a
9 reasonable opportunity to appear before the board and to speak on
10 any issue under the jurisdiction of the board.

11 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
12 maintain a written plan that describes how a person who does not
13 speak English can be provided reasonable access to the board's
14 programs. The board shall also comply with federal and state laws
15 for program and facility accessibility.

16 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
17 INFORMATION. (a) A person who is appointed to and qualifies for
18 office as a member of the board may not vote, deliberate, or be
19 counted as a member in attendance at a meeting of the board until
20 the person completes a training program that complies with this
21 section.

22 (b) The training program must provide the person with
23 information regarding:

24 (1) this article and the statutes enforced by the
25 board;

26 (2) the programs operated by the board;

27 (3) the role and functions of the board;

1 (4) the rules of the board with an emphasis on the
2 rules that relate to disciplinary and investigatory authority;

3 (5) the current budget for the board;

4 (6) the results of the most recent formal audit of the
5 board;

6 (7) the requirements of:

7 (A) the open meetings law, Chapter 551,
8 Government Code;

9 (B) the public information law, Chapter 552,
10 Government Code;

11 (C) the administrative procedure law, Chapter
12 2001, Government Code; and

13 (D) other laws relating to public officials,
14 including conflict-of-interest laws; and

15 (8) any applicable ethics policies adopted by the
16 board or the Texas Ethics Commission.

17 (c) A person appointed to the board is entitled to
18 reimbursement, as provided by the General Appropriations Act, for
19 the travel expenses incurred in attending the training program
20 regardless of whether the attendance at the program occurs before
21 or after the person qualifies for office.

22 (d) The executive director or the executive director's
23 designee shall provide to members of the board and to board
24 employees, as often as necessary, information regarding the
25 requirements for office or employment under this article, including
26 information regarding a person's responsibilities under applicable
27 laws relating to standards of conduct for state officers or

1 employees.

2 Sec. 21. SUNSET PROVISION. The Texas State Board of
3 Mechanical Industries is subject to Chapter 325, Government Code
4 (Texas Sunset Act). Unless continued in existence as provided by
5 that chapter, the board is abolished and this article expires
6 September 1, 2011.

7 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
8 a license, endorsement, certificate or registration, probate a
9 license, endorsement, certification or registration suspension, or
10 reprimand any person or entity regulated by the Board for any
11 violation of this Act or any regulatory statute administered by the
12 Board or any rule adopted under this Act or any rule adopted under
13 any regulatory statute administered by the Board. A violation of
14 this Act shall include but not be limited to: obtaining a license
15 through error or fraud; having recklessly, willfully, negligently
16 or arbitrarily violated municipal or other political subdivision
17 rules or ordinances regulating any work governed by the Board;
18 making a substantial misrepresentation of services to be provided
19 or which have been provided; making any false promise with intent
20 to influence, persuade, or induce an individual to contract for
21 services. Grounds for suspension or revocation of a license,
22 endorsement, certification or registration due to suspected
23 incompetence or willful violation by licensee may be determined
24 through retesting procedures.

25 (b) The Board may assess an administrative penalty against a
26 person or entity who violates a provision of this article, a law
27 administered by the Board, or a rule or order adopted by the Board

1 as provided by this section.

2 (c) The penalty for each violation may be in an amount not
3 to exceed \$1,000. Each day a violation continues or occurs may be
4 considered a separate violation for purposes of penalty assessment.
5 In determining the amount of the penalty, the board shall consider:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, extent, and gravity of the prohibited acts
8 and the hazard or potential hazard posed to the health or safety of
9 the public;

10 (2) the economic damage to property or the environment
11 caused by the violation;

12 (3) the history of previous violations;

13 (4) the amount necessary to deter future violations;

14 (5) efforts to correct the violation; and

15 (6) any other matter that justice may require.

16 (d) If the Board proposes to assess an administrative
17 penalty, refuse a person's application for licensure, endorsement,
18 certification or registration or to suspend or revoke a person's
19 license, endorsement, certification or registration, the person is
20 entitled to a hearing, if requested, governed by the Administrative
21 Procedure Act, Chapter 2001, Government Code.

22 (e) The executive director or the executive director's staff
23 designee or staff designees shall oversee and conduct
24 investigations, conduct informal conferences, negotiate agreed
25 final orders, draft formal complaints, recommend administrative
26 penalties, and pursue cases involving violations of this Act or any
27 regulatory statute administered by the Board or any rule adopted

1 under this Act or any rule adopted under any regulatory statute
2 administered by the Board at the State Office of Administrative
3 Hearings. Proceedings for assessing administrative penalties, the
4 refusal, suspension, or revocation of a license, endorsement,
5 certification or registration are subject to the Administrative
6 Procedure Act, Chapter 2001, Government Code.

7 (f) Within the 30-day period immediately following the day
8 on which a Board order assessing an administrative penalty to a
9 person or entity becomes final as provided by Section 2001.144,
10 Government Code, the person or entity charged with the penalty
11 shall:

12 (1) pay the penalty in full; or

13 (2) if the person files a petition for judicial review
14 contesting either the fact of the violation or the amount of the
15 penalty or contesting both the fact of the violation and the amount
16 of the penalty:

17 (A) forward the amount to the board for
18 placement in an escrow account; or

19 (B) in lieu of payment into escrow, post with
20 the board a supersedeas bond in a form approved by the board for
21 the amount of the penalty, the bond to be effective until all
22 judicial review of the order or decision is final.

23 (g) If a person charged is financially unable to either
24 forward the amount of the penalty for placement in an escrow
25 account or post a supersedeas bond for the amount of the penalty,
26 the person may satisfy the requirements of Subsection (f)(2) of
27 this section by filing with the board an affidavit sworn by the

1 person charged, stating that the person is financially unable to
2 either forward the amount of the penalty or post a bond.

3 (h) If the person charged fails to pay the penalty in full
4 as provided under Subsection (f)(1) of this section or forward the
5 money, post the bond, or file the affidavit as provided by
6 Subsection (f) or (g) of this section, the board may forward the
7 matter to the attorney general for enforcement.

8 (i) Judicial review of the order or decision of the board
9 assessing the penalty shall be under the substantial evidence rule
10 and shall be instituted by filing a petition with a district court
11 in Travis County, as provided by Subchapter G, Chapter 2001,
12 Government Code.

13 (j) If the penalty is reduced or not assessed by the court,
14 the board shall remit to the person charged the appropriate amount
15 plus accrued interest if the penalty has been paid or shall execute
16 a release of the bond if a supersedeas bond has been posted. The
17 accrued interest on amounts remitted by the board under this
18 subsection shall be paid at a rate equal to the rate charged on
19 loans to depository institutions by the New York Federal Reserve
20 Bank and shall be paid for the period beginning on the date the
21 penalty is paid to the board under Subsection (f) of this section
22 and ending on the date the penalty is remitted.

23 (k) An administrative penalty collected under Subsection (b)
24 of this section shall be deposited in the general revenue fund.

25 (l) A person commits an offense if the person violates this
26 Act or any regulatory statute administered by the Board or any rule
27 adopted under this Act or any rule adopted under any regulatory

1 statute administered by the Board, engages in activities for which
2 a license, endorsement, certification or registration is required
3 without a license, endorsement, certification or registration is
4 issued under this Act, or employs or utilizes an unlicensed,
5 unendorsed, uncertified, or unregistered person to engage in
6 activities for which a license, endorsement, certification or
7 registration is required by this Act. An offense under this
8 subsection is a Class C misdemeanor.

9 (m) A field representative of the board or, within the
10 jurisdiction of that municipality or water district, a municipal
11 inspector or water district inspector or other inspector authorized
12 to inspect work regulated by the board, may issue citations to
13 persons who engage in conduct described by Subsection (l) of this
14 Section.

15 (n) Citations issued under Subsection (l) and Subsection (m)
16 of this Section may be filed in a county justice court or municipal
17 court for adjudication of the offense or offenses.

18 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
19 adopt rules for a law or program regulated by the board as
20 necessary to comply with any federal regulation that imposes
21 standards or requirements on that law or program.

22 SECTION 2. The Plumbing License Law (Article 6243-101,
23 Vernon's Texas Civil Statutes) is amended by adding Section 1A to
24 read as follows:

25 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
26 Act is administered by the Texas State Board of Mechanical
27 Industries in accordance with Article 9150, Revised Statutes. To

1 the extent of a conflict between this Act and Article 9150, Revised
2 Statutes, that article prevails.

3 (b) Any reference in this Act to the Texas State Board of
4 Plumbing Examiners means the Texas State Board of Mechanical
5 Industries.

6 (c) The Texas State Board of Plumbing Examiners is abolished
7 and the functions of that board are exercised by the Texas State
8 Board of Mechanical Industries.

9 SECTION 3. The Air Conditioning and Refrigeration Contractor
10 License Law (Article 8861, Vernon's Texas Civil Statutes) is
11 amended by adding Section 1A to read as follows:

12 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

13 (a) This Act is administered by the Texas State Board of
14 Mechanical Industries in accordance with Article 9150, Revised
15 Statutes. To the extent of a conflict between this Act and Article
16 9150, Revised Statutes, that article prevails.

17 (b) Any reference in this Act to the Texas Department of
18 Licensing and Regulation, the commissioner of licensing and
19 regulation, or the Air Conditioning and Refrigeration Contractors
20 Advisory Board means the Texas State Board of Mechanical
21 Industries.

22 (c) The Air Conditioning and Refrigeration Contractors
23 Advisory Board is abolished and the functions of that board and the
24 functions, under this Act, of the Texas Department of Licensing and
25 Regulation and the commissioner of licensing and regulation are
26 exercised by the Texas State Board of Mechanical Industries.

27 SECTION 4. Section 341.033(f), Health and Safety Code, is

1 amended by adding to read as follows:

2 (f) A public drinking water supply may not be connected to a
3 sprinkling, condensing, cooling, plumbing, or other system unless
4 the connection is designed to ensure against a backflow or
5 siphonage of sewage or contaminated water into the drinking water
6 supply. Notwithstanding any other provision of this chapter, this
7 subsection is administered by the Texas State Board of Mechanical
8 Industries in accordance with Article 9150, Revised Statutes. To
9 the extent of a conflict between this chapter and Article 9150,
10 Revised Statutes, regarding the administration of this subsection,
11 Article 9150 prevails. Any reference in this chapter to the Texas
12 Natural Resource Conservation Commission, as it applies to this
13 subsection, means the Texas State Board of Mechanical Industries.

14 SECTION 5. Chapter 372, Health and Safety Code, is amended
15 by adding Section 372.0015 to read as follows:

16 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
17 administered by the Texas State Board of Mechanical Industries in
18 accordance with Article 9150, Revised Statutes. To the extent of a
19 conflict between this chapter and Article 9150, Revised Statutes,
20 that article prevails.

21 (b) Any reference in this chapter to the Texas Natural
22 Resource Conservation Commission means the Texas State Board of
23 Mechanical Industries.

24 SECTION 6. Chapter 34, Water Code, is amended by adding
25 Section 34.0015 to read as follows:

26 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.
27 (a) This chapter is administered by the Texas State Board of

1 Mechanical Industries in accordance with Article 9150, Revised
2 Statutes. To the extent of a conflict between this chapter and
3 Article 9150, Revised Statutes, that article prevails.

4 (b) Any reference in this chapter to the Texas Natural
5 Resource Conservation Commission or the Texas irrigators advisory
6 council means the Texas State Board of Mechanical Industries.

7 (c) The Texas irrigators advisory council is abolished and
8 the functions of that board and the functions, under this chapter,
9 of the Texas Natural Resource Conservation Commission are exercised
10 by the Texas State Board of Mechanical Industries.

11 SECTION 7. (a) As soon as possible after the effective date
12 of this Act, the governor shall appoint the initial members of the
13 Texas State Board of Mechanical Industries in accordance with
14 Article 9150, Revised Statutes, as added by this Act.

15 (b) A person who is serving on the day immediately before
16 the effective date of this Act as a member of the governing body of
17 an agency abolished by this Act is eligible for appointment to the
18 Texas State Board of Mechanical Industries if the person meets the
19 requirements set forth in Section 2, Article 9150, Revised
20 Statutes, as added by this Act.

21 (c) In making the initial appointments, the governor shall
22 designate members to serve terms as follows:

23 (1) one master plumber member, one licensed backflow
24 prevention specialist member, one plumbing inspector member, one
25 licensed irrigation installer member, and one public member serve
26 for terms expiring February 1, 2001;

27 (2) one journeyman plumber member, one air

1 conditioning and refrigeration contractor member, one engineer
2 member, one air conditioning and refrigeration license A member,
3 and one public member serve for terms expiring February 1, 2003;
4 and

5 (3) one plumbing contractor member, one air
6 conditioning and refrigeration license B member, licensed
7 irrigation contractor, and two public members serve for terms
8 expiring February 1, 2005.

9 (d) The Texas State Board of Mechanical Industries may not
10 take any action and is not created until the day after the date the
11 last appointee to the initial board takes office. On the date of
12 its creation, the board assumes its functions and:

13 (1) the Air Conditioning and Refrigeration Contractors
14 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
15 irrigators advisory council are abolished;

16 (2) the obligations, rights, contracts, records and
17 other property, and personnel of, and unspent money appropriated to
18 or for, the abolished boards and council or the governing body for
19 the laws or programs transferred to the new board under this Act
20 are transferred to the Texas State Board of Mechanical Industries;

21 (3) the rules of the abolished boards and council or
22 the governing body for the laws or programs transferred to the new
23 board under this Act are continued in effect as rules of the Texas
24 State Board of Mechanical Industries until superseded by rule of
25 the new board;

26 (4) the licenses, certificates, permits, or
27 registrations in effect that were issued by the abolished boards or

1 council or the governing body for the laws or programs transferred
2 to the new board under this Act are continued in effect as
3 licenses, certificates, permits, or registrations of the Texas
4 State Board of Mechanical Industries;

5 (5) a complaint or investigation pending before the
6 abolished boards or council or the governing body for the laws or
7 programs transferred to the new board under this Act is transferred
8 without change in status to the Texas State Board of Mechanical
9 Industries;

10 (6) a contested case pending before the abolished
11 boards and council or the governing body for the laws or programs
12 transferred to the new board under this Act is transferred to the
13 Texas State Board of Mechanical Industries and actions taken in the
14 proceeding are treated as if taken by the Texas State Board of
15 Mechanical Industries; and

16 (7) any reference in a law to the abolished boards or
17 council means the Texas State Board of Mechanical Industries.

18 (e) Regardless of the changes in law made by this Act, until
19 the date that the Air Conditioning and Refrigeration Contractors
20 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
21 irrigators advisory council are abolished as provided by this
22 section, the boards and council continue in existence and shall
23 administer their functions under the law that governed the boards
24 and council before the effective date of this Act, and the prior
25 law is continued in effect for that purpose.

26 (f) The Texas State Board of Mechanical Industries shall
27 adopt rules under this Act not later than December 1, 1999.

1 SECTION 8. The following laws are repealed:

2 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
3 Law (Article 6243-101, Vernon's Texas Civil Statutes);

4 (2) Section 3A, Air Conditioning and Refrigeration
5 Contractor License Law (Article 8861, Vernon's Texas Civil
6 Statutes); and

7 (3) Section 34.003, Water Code.

8 SECTION 9. This Act takes effect September 1, 1999.

9 SECTION 10. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable James E. "Pete" Laney
Speaker of the House of Representatives

4-15-99
(date)

Sir:

We, your COMMITTEE ON LICENSING AND ADMINISTRATIVE PROCEDURES

to whom was referred HB 2155 have had the same under consideration and beg to report back with the recommendation that it

- () do pass, without amendment.
- () do pass, with amendment(s).
- (x) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.
- (x) yes () no A fiscal note was requested.
- () yes (x) no A criminal justice policy impact statement was requested.
- () yes (x) no An equalized educational funding impact statement was requested.
- () yes (x) no An actuarial analysis was requested.
- () yes (x) no A water development policy impact statement was requested.
- () yes (x) no A tax equity note was requested.
- () The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.

For Senate Measures: House Sponsor _____

Joint Sponsors: _____ / _____ / _____

Co-Sponsors: _____

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Wilson, Chair	✓			
Yarbrough, Vice-chair	✓			
Flores	✓			
Goolsby	✓			
Haggerty	✓			
Jones, D.				✓
Moreno, J.	✓			
Palmer	✓			
Reyna, A.	✓			

Total

8 aye
0 nay
0 present, not voting
1 absent

Ron Wilson
CHAIR

BILL ANALYSIS

Office of House Bill Analysis

C.S.H.B. 2155
By: Yarbrough
Licensing & Administrative Procedures
4/19/1999
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, different governmental entities have the authority to issue licenses for plumbing, air conditioning and refrigeration contracting, and backflow prevention. As a result, a contractor who wishes to perform this type of work must obtain a necessary license from various boards under the Department of Licensing and Regulation, the State Board of Plumbing Examiners, and the Texas Natural Resource Conservation Commission. The purpose of this bill is to create a more effective and efficient system of licensing and to promote uniform and regular inspections in these professions.

C.S.H.B. 2155 creates the Texas State Board of Mechanical Industries (board). This bill sets forth rules relating to the designation of board members, terms of board members, officers of the board, board meetings, board member compensation, board membership restrictions, grounds for removal of a board member, and restrictions on certain lobbying activities of board members. C.S.H.B. 2155 requires the board to enforce and administer enumerated laws and to issue specified licenses and permits. This bill sets forth administrative penalties for violations under this Act to be assessed by the board. In addition, this bill abolishes certain existing regulatory boards, commissions, and councils and transfers their functions to the board.

RULEMAKING AUTHORITY

It is the opinion of the Office of House Bill Analysis that rulemaking authority is expressly delegated to the Texas State Board of Mechanical Industries in SECTION 1 (Sections 17 and 23, Article 9150, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends V.T.C.S. by adding Title 132B, as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

ARTICLE 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. Defines "board" as the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. Sets forth the composition of the Texas State Board of Mechanical Industries (board). Provides that members of the board are appointed by the governor with the advice and consent of the senate. Requires board appointments to be made without regard to the race, color, disability, sex, religion, age, or national origin of the appointees.

Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) Requires the governor to designate a board member as the board's presiding officer to serve at the will of the governor. Requires the board annually to select an assistant presiding officer and a secretary-treasurer.

(b) Requires the board to hold at least two regular meetings each year. Prohibits the board from holding more than four meetings each year unless at least three-fifths of the board members submit a written request to the presiding officer to call additional meetings.

(c) Entitles a member of the board to a per diem as set by the General Appropriations Act for each day the member engages in the business of the board. Prohibits a member from receiving compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses as provided by the General Appropriations Act.

Sec. 4. TERMS. Provides that the members of the board are appointed for staggered six-year terms, with five members' terms expiring on February 1 of each odd-numbered year. Requires a member appointed to fill a vacancy to hold office for the remainder of that term.

Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. Prohibits a person from being a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by a regulatory agency in the field of plumbing or mechanical work;
- (2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;
- (3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or
- (4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) Defines "Texas trade association."

(b) Prohibits a person from being a member of the board and from being a board employee in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if the person or the person's spouse meets certain characteristics.

(c) Prohibits a person from being a member of the board or acting as the general counsel to the board, if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 7. EFFECT OF LOBBYING ACTIVITY. Prohibits a person from serving as a member of the board or acting as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) Specifies the grounds for removal of a board member.

(b) Provides that the validity of a board's action is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) Requires the executive director of the Texas Department of Licensing and Regulation. (executive director) to notify the board's presiding officer that a potential ground for removal exists and requires the presiding officer to then notify the governor and the attorney general. Requires the executive director, if the potential ground for removal involves the presiding officer, to notify the next highest ranking officer of the board who is required to then notify the governor and the attorney general.

Sec. 9. STAFF. (a) Requires the board to employ an executive director and administrative and clerical employees as necessary to carry out the board's functions. Requires the board to develop and implement policies that clearly separate the board's policymaking responsibilities

and the management responsibilities of the executive director and the staff of the board.

Sec. 10. REGULATORY STATUTES ADMINISTERED. Requires the board to administer and enforce specified statutes relating to the regulation of plumber licensing, air conditioning and refrigeration contractor licenses, irrigators, and connections to public drinking water.

Sec. 11. ADVISORY COMMITTEES. Requires the board to appoint separate advisory committees on plumbing, irrigation, boilers, air conditioning and refrigeration, and backflow prevention. Authorizes the board to appoint additional advisory committees as determined to be necessary by a majority of the board. Provides that a member of an advisory committee appointed under this section serves a two-year term. Provides that an advisory committee member is not entitled to compensation but entitles an advisory committee member to reimbursement for actual and necessary expenses, including travel expenses, incurred in performing duties as a member of the advisory committee.

Sec. 12. SEPARATE LICENSES. Requires the board to issue separate licenses, certificates, permits, or registrations for the programs under Section 10 of this article. Authorizes the board to issue more than one type of license, certificate, permit, or registration to a person who is qualified to hold each of the licenses, certificates, permits, or registrations issued. Requires the board to adopt rules relating to the issuance of multiple licenses, certificates, permits, or registrations to a person under laws administered by the board.

Sec. 13. EXPENDITURES; AUDIT. Authorizes the board to authorize disbursements from appropriated funds that are necessary to carry out this article and the laws and programs listed in Section 10 of this article. Provides that the financial transactions of the board are subject to audit by the state auditor in accordance with Chapter 321, Government Code.

Sec. 14. ANNUAL FINANCIAL REPORT. Requires the board to annually file with the governor and the presiding officer of each house of the legislature a detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year. Provides that the annual report must be in the form and reported in the time provided under the General Appropriations Act.

Sec. 15. PERSONNEL POLICIES. Requires the executive director or the executive director's designee to develop an intra-agency career ladder program requiring intra-agency posting of all nonentry level positions concurrently with any public posting. Requires the executive director or the executive director's designee to develop a system of annual performance evaluations based on measurable job tasks and on the system established under this subsection.

Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. Requires the executive director or the executive director's designee to prepare and maintain a written policy statement implementing an equal employment opportunity program to ensure that personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. Specifies the information that is required to be contained in a policy statement. Provides that a policy statement must be updated annually, be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1), and be filed with the governor's office.

Sec. 17. PUBLIC INTEREST INFORMATION. (a) Requires the board to prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board. Requires the board to make the information available to the public and appropriate state agencies.

(b) Requires the board, by rule, to establish methods to notify consumers and service recipients of the board's name, mailing address, and telephone number, and the license number of the responsible licensee for the purpose of directing complaints to the board. Specifies the means by which the board or the responsible licensee is required to provide notification.

(c) Requires the board to list, along with its regular telephone number, the toll-free telephone number for complaints about a health professional, if the toll-free number is established under other state law.

Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. Requires the board to develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 19. PROGRAM ACCESSIBILITY. Requires the board to prepare and maintain a written plan describing how reasonable access to the board's programs can be provided to a person who does not speak English. Requires the board to comply with federal and state laws for program and facility accessibility.

Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT INFORMATION. Prohibits a person who is appointed to and qualifies for office as a member of the board from voting, deliberating, or being counted as an attending member at a board meeting, until the person completes a training program under this section. Specifies the type of information that the training program must provide a person. Entitles a board member to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program, regardless of whether the attendance at the program occurs before or after the person qualifies for office. Requires the executive director or the executive director's designee to provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this article.

Sec. 21. SUNSET PROVISION. Provides that the board is subject to Chapter 325, Government Code (Texas Sunset Act) and the board is abolished and this article expires September 1, 2011, unless its existence is continued as provided by that chapter.

Sec. 22. PENALTIES. (a) Requires the board to revoke or suspend a license, endorsement, certification or registration, probate a license, endorsement, certification or registration suspension, or reprimand a person or entity regulated by the board for a violation of this Act or a regulatory statute administered by the board or any rule adopted under this Act or any rule adopted under a regulatory statute administered by the board. Specifies acts that constitute a violation of this Act.

(b) Authorizes the board to assess an administrative penalty against a person who violates a provision of this article, a law administered by the board, or a rule or order adopted by the board as provided by this section.

(c) Prohibits a penalty from exceeding \$1,000 for each violation. Authorizes the consideration of each day a violation continues or occurs as a separate violation for purposes of penalty assessment. Requires the board to consider specified factors in determining the amount of the penalty.

(d) Entitles a person to request a hearing governed by Chapter 2001, Government Code (Administrative Procedures Act), if the board proposes to assess an administrative penalty, refuse a person's application for licensure, endorsement, certification, or registration or to suspend or revoke a person's license, endorsement, certification, or registration

(e) Requires the executive director or the executive director's staff designee to oversee and conduct investigations, conduct informal conferences, negotiate agreed final orders, draft formal complaints, recommend administrative penalties, and pursue cases involving violations of this Act and specified statutes and rules. Provides that such proceedings are subject to the Administrative Procedure Act.

(f) Requires the person or entity charged with the penalty, within a specified time period, to pay the penalty in full, or, if the person or entity files a petition for judicial review

contesting certain findings, to forward the amount to the board for placement in an escrow account or in lieu of payment into escrow, post with the board a supersedeas bond in a form approved by the board for the amount of the penalty to be effective until all judicial review of the order or decision is final.

(g) Authorizes a person charged who is financially unable to either forward the amount of the penalty for placement in an escrow account or, post a supersedeas bond, to satisfy the requirements by filing with the board a sworn affidavit stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(h) Authorizes the board, if the person charged fails to pay the penalty in full, or forward the money, post the bond, or file the affidavit as provided by Subsection (f) or (g) of this section, to forward the matter to the attorney general for enforcement.

(i) Requires judicial review of the order or decision of the board assessing the penalty to be under the substantial evidence rule and to be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(j) Requires the board, if the penalty is reduced or not assessed by the court, to remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or to execute a release of the bond if a supersedeas bond has been posted. Requires the payment of accrued interest on amounts remitted by the board to be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank for the period beginning on the date the penalty is paid to the board under Subsection (f) of this section and ending on the date the penalty is remitted.

(k) Requires a penalty collected under this section to be deposited in the general revenue fund.

(l) Specifies the acts by a person that constitute a Class C misdemeanor under this section.

(m) Authorizes a field representative of the board, a municipal or water district inspector with proper jurisdiction, or other authorized inspector, to issue citations to persons who engage in conduct described by Subsection (l).

(n) Authorizes the filing of citations under Subsections (l) and (m) in a county justice court or municipality court for adjudication of the offense.

Sec. 23. EFFECT OF FEDERAL REGULATIONS. Requires the board to adopt rules for a law or program regulated by the board in order to comply with any federal regulation that imposes standards or requirements on that law or program.

SECTION 2. Amends the Plumbing License Law, Article 6243-101, V.T.C.S., by adding Section 1A , as follows:

Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. Provides that this Act is administered by the Texas State Board of Mechanical Industries in accordance with Article 9150, V.T.C.S. Provides that to the extent of a conflict between this Act and Article 9150, V.T.C.S., that article prevails. Provides that any reference in this Act to the Texas State Board of Plumbing Examiners means the Texas State Board Mechanical Industries. Abolishes the Texas State Board of Plumbing Examiners and provides that the functions of that board are exercised by the Texas Board of Mechanical Industries.

SECTION 3. Amends the Air Conditioning and Refrigeration Contractor License Law, Article 8861, V.T.C.S., by adding Section 1A, as follows:

Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.
(a) Provides that this Act is administered by the Texas State Board Mechanical Industries in

accordance with Article 9150, V.T.C.S. Provides that to the extent of a conflict between this Act and Article 9150, V.T.C.S., that article prevails.

(b) Provides that any reference in this Act to the Texas Department of Licensing and Regulation, the commissioner of licensing and regulation, or the Air Conditioning and Refrigeration Contractors Advisory Board means the Texas State Board of Mechanical Industries.

(c) Abolishes the Air Conditioning and Refrigeration Contractors Advisory Board and provides that the functions of that board and the functions, under this Act, of the Texas Department of Licensing and Regulation and the commissioner of licensing and regulation are exercised by the Texas State Board of Mechanical Industries.

SECTION 4. Amends Section 341.033(f), Health and Safety Code, to provide that this subsection is administered by the board in accordance with Article 9150, V.T.C.S., notwithstanding another provision of this chapter.

SECTION 5. Amends Chapter 372, Health and Safety Code, by adding Section 372.0015, as follows:

Sec. 372.0015. FUNCTIONS TRANSFERRED. Provides that this chapter is administered by the Texas State Board of Mechanical Industries in accordance with Article 9150, V.T.C.S. Provides that to the extent of a conflict between this chapter and Article 9150, V.T.C.S., that article prevails. Provides that any reference in this chapter to the Texas Natural Resource Conservation Commission means the Texas State Board of Mechanical Industries.

SECTION 6. Amends Chapter 34, Water Code, by adding Section 34.0015, as follows:

Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED. (a) Provides that this chapter is administered by the board in accordance with Article 9150, V.T.C.S.. Provides that to the extent of a conflict between this chapter and Article 9150, V.T.C.S., that article prevails.

(b) Provides that any reference in this chapter to the Texas Natural Resource Conservation Commission or the Texas irrigators advisory council means the Texas State Board of Mechanical Industries.

(c) Abolishes the Texas irrigators advisory council and provides that the functions of that board and the functions, under this chapter, of the Texas Natural Resource Conservation Commission are exercised by the Texas State Board of Mechanical Industries.

SECTION 7. (a) Requires the governor, as soon as possible after the effective date of this Act, to appoint the initial members of the board in accordance with Article 9150, V.T.C.S., as added by this Act.

(b) Provides that a person who is serving on the day immediately before the effective date of this Act as a member of the governing body of an agency abolished by this Act is eligible for appointment to the board if the person meets the requirements set forth in Section 2, Article 9150, V.T.C.S.

(c) Requires the governor, in making the initial appointments to the Texas State Board of Mechanical Industries, to designate:

(1) one master plumber member, one licensed backflow prevention specialist member, one plumbing inspector member, one licensed irrigator member, and one public member to serve terms expiring February 1, 2001;

(2) one journeyman plumber member, one industrial boiler plant operator or building engineer member, one air conditioning and refrigeration License A contractor member, one engineer member, and one public member to serve terms expiring February 1,

2003; and

(3) one plumbing contractor member, one boiler installer or service member, one air conditioning and refrigeration license B member, and two public members to serve terms expiring February 1, 2005.

(d) Prohibits the Texas State Board of Mechanical Industries from taking any action until and provides that it is not created until the day after the date the last appointee to the initial board takes office. Provides that on the creation date, the board assumes its functions and:

(1) the Air Conditioning and Refrigeration Contractors Advisory Board, Texas State Board of Plumbing Examiners, and Texas irrigators advisory council are abolished;

(2) the obligations, rights, contracts, records and other property, and personnel of, and unspent money appropriated to or for, the abolished boards and council or the governing body for the laws or programs transferred to the new board under this Act are transferred to the Texas State Board of Mechanical Industries;

(3) the rules of the abolished boards and council or the governing body for the laws or programs transferred to the new board under this Act are continued in effect as rules of the Texas State Board of Mechanical Industries until superseded by rule of the new board;

(4) the licenses, certificates, permits, or registrations in effect that were issued by the abolished boards or council or the governing body for the laws or programs transferred to the new board under this Act are continued in effect as licenses, certificates, permits, or registrations of the Texas State Board of Mechanical Industries;

(5) a complaint or investigation pending before the abolished boards or council or the governing body for the laws or programs transferred to the new board under this Act is transferred without change in status to the Texas State Board of Mechanical Industries;

(6) a contested case pending before the abolished boards and council or the governing body for the laws or programs transferred to the new board under this Act is transferred to the Texas State Board of Mechanical Industries and actions taken in the proceeding are treated as if taken by the Texas State Board of Mechanical Industries; and

(7) any reference in a law to the abolished boards or council means the Texas State Board of Mechanical Industries.

(e) Provides that the boards and council continue in existence and requires them to administer their functions under the law that governed the boards and council before the effective date of this Act, and provides that the prior law is continued in effect for that purpose, regardless of the changes in law made by this Act, until the date that the Air Conditioning and Refrigeration Contractors Advisory Board, Texas State Board of Plumbing Examiners, and Texas irrigators advisory council are abolished as provided by this section.

(f) Requires the Texas State Board of Mechanical Industries to adopt rules under this Act no later than December 1, 1999.

SECTION 8. Repealer: Sections 4, 4a, 5A, 6, and 7, Article 6243-101, V.T.C.S. (The Plumbing License Law); Section 3A, Article 8861, V.T.C.S. (Air Conditioning and Refrigeration Contractor License Law); and Section 34.003, Water Code (Irrigators Advisory Council).

SECTION 9. Effective date: September 1, 1999.

SECTION 10. Emergency clause.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute modifies the original bill by substituting the Texas State Board of Mechanical Industries (board) for the Texas Board of Plumbing and Mechanical Work and modifies the caption to make a conforming change.

The substitute modifies the original in SECTION 1 (proposed Section 2, Article 9150, V.T.C.S.) to provide that among the board's 15 members are of one member who has held an air conditioning and refrigeration license A, rather an air conditioning and refrigeration license, for at least five years, one member who has held an air conditioning and refrigeration license B for at least five years, one member who is a licensed irrigation installer for at least ten years, rather than a licensed irrigator, and one member who is a licensed irrigation contractor. Deletes the provision that includes on the board one industrial boiler plant operator or building engineer who operates or supervises an industrial boiler in this state. Makes nonsubstantive changes.

The substitute modifies the original in SECTION 1 (proposed Section 10, Article 9150, V.T.C.S.) to require the board to administer and enforce Section 341.033, Health and Safety Code (relating to the regulation of certain connections to public drinking water). Deletes proposed language in the original which required the board to administer and enforce Chapter 755, Health and Safety Code (relating to the regulation of boilers).

The substitute modifies the original in SECTION 1 (proposed Section 17, Article 9150, V.T.C.S.) to require the board, by rule, to establish methods to notify consumers and service recipients of the license number of the responsible licensee, in addition to board's name, mailing address, and telephone number, for the purpose of directing complaints to the board. Requires the board or the responsible licensee, in order to provide for such notification, to provide for the company name and license number of the responsible licensee to be displayed on both sides of vehicles use in conjunction with a contracting or performing work regulated by the board, in addition to other specified means of notification.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) to change the title to "PENALTIES," and deletes "administrative" from the proposed title of the original. Makes nonsubstantive changes.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) By providing new text for proposed Subsection (a) to require the board to revoke or suspend a license, endorsement, certification or registration, probate a license, endorsement, certification or registration suspension, or reprimand a person or entity regulated by the board for a violation of this Act or a regulatory statute administered by the board or any rule adopted under this Act or any rule adopted under a regulatory statute administered by the board. Specifies acts that constitute a violation of this Act.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating Subsections (a) of the original to Subsections (b) by incorporating Subsection (b) of the original into proposed Subsection (c)..

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by providing new text for proposed Subsection (d) to entitle a person to request a hearing governed by Chapter 2001, Government Code (Administrative Procedures Act), if the board proposes to assess an administrative penalty, refuse a person's application for licensure, endorsement, certification, or registration or to suspend or revoke a person's license, endorsement, certification, or registration. Deletes proposed language authorizing the director, if after investigation of a possible violation the director determines that a violation has occurred, to issue a violation report stating the facts on which the conclusion is based, recommend an administrative penalty, and recommend the amount of that proposed penalty.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.)

by providing new text for proposed Subsection (e) to require the executive director or the executive director's staff designee to oversee and conduct investigations, conduct informal conferences, negotiate agreed final orders, draft formal complaints, recommend administrative penalties, and pursue cases involving violations of this Act and specified statutes and rules. Provides that such proceedings are subject to the Administrative Procedure Act. Deletes proposed language requiring the executive director to give written notice of the report to the person charged, no later than the 14th day after the date on which the report is issued. Deletes proposed language requiring that the notice include a brief summary of the charges, a statement of the amount of the penalty recommended, and a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating proposed Subsection (j) of the original to Subsection (f) and by requiring a person or entity, rather than a person, charged with the penalty, within a specified time period, to pay the penalty in full, or if the person or entity files a petition for judicial review contesting certain findings, to forward the amount to the board for placement in an escrow account or, in lieu of payment into escrow, post with the board a supersedeas bond in a form approved by the board for the amount of the penalty to be effective until all judicial review of the order or decision is final. Deletes proposed language from Subsection (f) of the original authorizing the person charged to accept the executive director's determination, including the recommended penalty, or to make a written request for a hearing on the determination, no later than the 20th day after the date on which notice is received.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating proposed Subsection (k) of the original to Subsection (g). Deletes proposed language from Subsection (g) of the original requiring the board to issue an order approving the determination and ordering the payment of the recommended penalty if the person charged accepts the executive director's determination. Makes conforming changes.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating proposed Subsection (l) to Subsection (h). Deletes proposed language requiring the executive director to set a hearing and give notice of the hearing if the person charged requests a hearing or fails to timely respond to the notice and requiring the hearing to be held by a hearing examiner designated by the board. Deletes proposed language from Subsection (h) of the original requiring the hearing examiner to make findings of fact and conclusions of law and promptly issue to the board a proposal for decision as to the violation, including a recommendation as to the amount of the proposed penalty. Deletes language authorizing the board, by order, based on the findings of fact, conclusions of law, and recommendations of the hearing examiner, to find that a violation has or has not occurred and to assess a penalty for a violation and providing that all proceedings under this subsection are subject to Chapter 2001, Government Code. Makes conforming changes.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating proposed Subsection (m) to Subsection (i). Deletes proposed language from Subsection (i) of the original requiring the board to give notice of the board's order to the person charged and specifying the information required to be contained in the notice.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating proposed Subsection (n) to Subsection (j) and by making conforming changes.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by redesignating proposed Subsection (o) to Subsection (k).

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) in proposed Subsection (k) to require a penalty collected under this Subsection (b), rather than this section, to be deposited in the general revenue fund.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by adding new Subsection (l) to specify the acts by a person that constitute a Class C misdemeanor under this section.

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by adding new Subsection (m) to authorize a field representative of the board, municipality or water district inspector with proper jurisdiction, or other authorized inspector, to issue citations to persons who engage in conduct described by Subsection (l).

The substitute modifies the original in SECTION 1 (proposed Section 22, Article 9150, V.T.C.S.) by adding new Subsection (n) to authorize the filing of citations under Subsections (l) and (m) in a county justice court or municipality court for adjudication of the offense.

The substitute modifies the original in SECTIONS 2 and 3 to make conforming changes.

The substitute modifies the original by adding new SECTION 4 (Section 341.033, Health and Safety Code) in Subsection (f) to provide that this subsection is administered by the board in accordance with Article 9150, V.T.C.S., notwithstanding another provision of this chapter.

The substitute modifies the original by redesignating proposed SECTION 4 (Section 341.033, Health and Safety Code) of the original to SECTION 5 of the substitute. SECTION 5 of the original related to the transfer of functions mentioned in this chapter from the Texas Natural Resource Conservation Commission to the board.

The substitute modifies the original in SECTION 6 to make conforming changes.

The substitute modifies the original in SECTION 7 to provide that a person who is serving on the day immediately before the effective date of this Act as a member of the governing body of an agency abolished by this Act is eligible for appointment to the board if the person meets the requirements set forth in Section 2, Article 9150, V.T.C.S. Makes conforming changes.

The substitute modifies the original in SECTION 8 to delete the proposed repeal of Subchapter B, Chapter 755, Health and Safety Code (Board of Boiler Rules). Makes nonsubstantive changes.

SUMMARY OF COMMITTEE ACTION

HB 2155

April 7, 1999 2:00PM or upon adjournment

Considered in public hearing

Testimony taken in committee

Left pending in committee

April 15, 1999 upon adjournment

Considered in formal meeting

Committee substitute considered in committee

Reported favorably as substituted

WITNESS LIST

HB 2155

HOUSE COMMITTEE REPORT

Licensing & Administrative Procedures Committee

April 7, 1999 - 2:00PM or upon adjournment

For: Briers, Stanley J. (Plumbing Heating Cooling
Construction Association of Houston)
Coleman, David (Self and DFW Sprinkler Systems
Incorporated)
Janecka, Ron (Associated Plumbing Heating Cooling
Contractors of Texas)
Rex, Glenn (Mechanical Contractors Associations of
Texas)
Wyman, Russell (Self and Code Administrator)

Against: Cardenas, Jose L. (Self and Texas State Plumbing Board)
Christianson, Robert (Self and Christianson Plumbing
and Air Conditioning)
Christianson, Trent (Plumbing Contractor)
Combs, Thomas (Self and Plumbing and Air)
Davis, Jay E. (Self and Williams and Davis Boiler
Inspectors)
Gunn, Joe D. (Self and Worker)
Hennessey, Patrick J. (Self and Authorized Inspector)
Pearsall Jr, Mason (Self and Power Plumbing
Incorporated)
Prather, Michael (Heating and Air Conditioning
Contractor)
Schmidt, Homer (Texas Boiler Advisory Board)
Trainowski, Bruce A. (Self and Boiler Inspector)

Registering, but not testifying:

Against: Blar, Andrew (Texas Association of Business and Chamber
of Commerce)
Christianson, Lane (Residential Air Conditioning
Contractor)
Cobb, Ronald H. (American Inc. Association)
Downs, Michael (Self and Dallas Plumbing Company)
Gutrie, Dennis (Custom Plumbing)
Juarez, Benito (Self and Authorized Inspector)
Kent, Christopher G. (Self and Insurance- Boiler and
Machinery)
Miller, Mark (Ashley Plumbing Company)
Miller, Mark (Miller Plumbing Company Incorporated)
Moore, Terry W. (Self and Dallas Plumbing Company)
Miller, Mark (Gibson Plumbing Company Incorporated)
Pinkerton, Jennifer (Texas Chemical Council)
Rocha, Joe (Self and Southwest Homes Builder)
West, Richard D. (Self and Boiler Inspector)

On: Batterton, Carol (Texas Natural Resource Conservation
Commission)
Conrad, Doretta (Texas State Board of Plumbing
Examiners)
Morrow Jr, J. Dewitt (Texas State Board of Plumbing
Examiners)

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2155 by Yarbrough (relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
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The bill would create the "Texas State Board of Mechanical Industries", and would shift regulatory responsibilities for several programs to the new agency. All functions of the Texas State Board of Plumbing Examiners (TSBPE) would be transferred to the new agency, and the TSBPE would be abolished. Regulatory responsibilities for air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Two advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board and the Texas Irrigators Advisory Council. New advisory committees would be created on each of the following: plumbing; irrigation; air conditioning and refrigeration; and backflow prevention.

It is assumed that resources could be transferred between affected agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2155 by Yarbrough (Relating to the creation and operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would re-create the Texas State Board of Plumbing Examiners as the "Texas Board of Plumbing and Mechanical Work", and would shift regulatory responsibilities for several programs to the new agency. Regulatory responsibilities for boilers and air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Several advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board, the Board of Boiler Rules, and the Texas Irrigators Advisory Council.

It is assumed that resources could be shifted between agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 456 Board of Plumbing Examiners, 344 Commission on Human Rights, 582 Natural Resource Conservation Commission

LBB Staff: JK, TH, CB

OFFICIAL MEMORANDUM
STATE OF TEXAS
OFFICE OF THE GOVERNOR

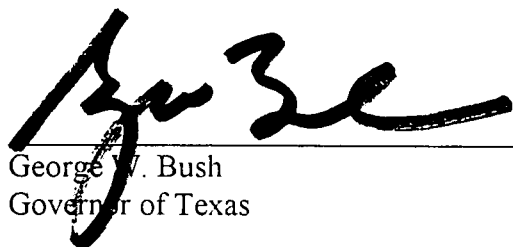
TO ALL TO WHOM THESE PRESENTS SHALL COME:

Pursuant to Article IV, Section 14, of the Texas Constitution, I, George W. Bush, Governor of Texas, do hereby disapprove and veto **House Bill No. 2155** because of the following objections:

House Bill No. 2155 abolishes the Plumbing Board and merges it into the newly created State Board of Mechanical Industries, which will also regulate the lawn irrigation and air conditioning industries. The existing system that regulates these varying professionals is preferable.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of the State to be affixed hereto at Austin, this 20th day of June, 1999.




George W. Bush
Governor of Texas

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
11:45 PM O'CLOCK

JUN 20 1999

Secretary of State

ADOPTED

MAY 17 1983

James Wilson
HOLLY SPRING, TEXAS

By *Lawrence*

H B. No. 2155

Substitute the following for H B. No. 2155:

By *Wilson*

C.S. H B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical Industries consists of 15 members as follows:

(1) one member who has at least 10 years of practical experience as a master plumber;

(2) one member who has at least five years of practical experience as a journeyman

plumber;

(3) one member who has at least five years of experience as a plumbing contractor;

(4) one member who has at least five years of practical experience as a plumbing

inspector;

(5) one member who is a licensed air conditioning and refrigeration contractor;

(6) one member who has held an air conditioning and refrigeration license A for at

least five years;

1 (7) one member who has held an air conditioning and refrigeration license B for at
2 least five years;

3 (8) one member who is a licensed irrigation installer for at least ten years;

4 (9) one member who is a licensed irrigation contractor for at least five years;

5 (10) one member who is a licensed backflow prevention specialist;

6 (11) one member who is a licensed engineer who has professional engineering
7 experience in plumbing design or mechanical design; and

8 (12) four members who are representatives of the public.

9 (b) Members of the board are appointed by the governor with the advice and consent of the
10 senate.

11 (c) Appointments to the board shall be made without regard to the race, color, disability, sex,
12 religion, age, or national origin of the appointees.

13 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor shall designate a
14 member of the board as the presiding officer of the board to serve in that capacity at the will of the
15 governor. The board annually shall select an assistant presiding officer and a secretary-treasurer.

16 (b) The board shall hold at least two regular meetings each year. The board may not hold
17 more than four meetings each year unless at least nine members of the board request the presiding
18 officer in writing to call additional meetings.

19 (c) A member of the board is entitled to a per diem as set by the General Appropriations Act
20 for each day the member engages in the business of the board. A member may not receive
21 compensation for travel expenses, including expenses for meals and lodging, other than transportation
22 expenses as provided by the General Appropriations Act.

23 Sec. 4. TERMS. (a) Members of the board are appointed for staggered six-year terms, with
24 five members' terms expiring on February 1 of each odd-numbered year.

"Is... for at
least 10 years"
and
"for at least
five years"
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per
KEN

1 (b) A member appointed to fill a vacancy shall hold office for the remainder of that term.

2 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be a public member of
3 the board if the person or the person's spouse:

4 (1) is registered, certified, or licensed by a regulatory agency in the field of plumbing
5 or mechanical work;

6 (2) is employed by or participates in the management of a business entity or other
7 organization regulated by or receiving money from the board;

8 (3) owns or controls, directly or indirectly, more than a 10 percent interest in a
9 business entity or other organization regulated by or receiving money from the board; or

10 (4) uses or receives a substantial amount of tangible goods, services, or money from the
11 board other than compensation or reimbursement authorized by law for board membership, attendance,
12 or expenses.

13 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this section, "Texas trade
14 association" means a cooperative and voluntarily joined association of business or professional
15 competitors in this state designed to assist its members and its industry or profession in dealing with
16 mutual business or professional problems and in promoting their common interest.

17 (b) A person may not be a member of the board and may not be a board employee employed
18 in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes
19 of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of
20 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

21 (1) the person is an officer, employee, or paid consultant of a Texas trade association
22 in the field of plumbing or mechanical work; or

23 (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade
24 association in the field of plumbing or mechanical work.

1 (c) A person may not be a member of the board or act as the general counsel to the board if the
2 person is required to register as a lobbyist under Chapter 305, Government Code, because of the
3 person's activities for compensation on behalf of a profession related to the operation of the board.

4 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a member of the
5 board or act as the general counsel to the board if the person is required to register as a lobbyist under
6 Chapter 305, Government Code, because of the person's activities for compensation on behalf of a
7 profession related to the operation of the board.

8 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from
9 the board that a member:

10 (1) does not have at the time of taking office the qualifications required by Section 2
11 of this article;

12 (2) does not maintain during service on the board the qualifications required by
13 Section 2 of this article;

14 (3) is ineligible for membership under Section 5, 6, or 7 of this article;

15 (4) cannot, because of illness or disability, discharge the member's duties for a
16 substantial part of the member's term; or

17 (5) is absent from more than half of the regularly scheduled board meetings that the
18 member is eligible to attend during a calendar year without an excuse approved by a majority vote of
19 the board.

20 (b) The validity of an action of the board is not affected by the fact that it is taken when a
21 ground for removal of a board member exists.

22 (c) If the executive director has knowledge that a potential ground for removal exists, the
23 executive director shall notify the presiding officer of the board of the potential ground. The presiding
24 officer shall then notify the governor and the attorney general that a potential ground for removal

1 exists. If the potential ground for removal involves the presiding officer, the executive director shall
2 notify the next highest ranking officer of the board, who shall then notify the governor and the attorney
3 general that a potential ground for removal exists.

4 Sec. 9. STAFF. (a) The board shall employ an executive director and administrative and
5 clerical employees as necessary to carry out the board's functions.

6 (b) The board shall develop and implement policies that clearly separate the policymaking
7 responsibilities of the board and the management responsibilities of the executive director and staff of
8 the board.

9 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall administer and
10 enforce:

11 (1) The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes);

12 (2) the law regulating environmental performance standards for plumbing fixtures.

13 Chapter 372, Health and Safety Code;

14 (3) the Air Conditioning and Refrigeration Contractor License Law (Article 8861,
15 Vernon's Texas Civil Statutes);

16 (4) the law regulating irrigators, Chapter 34, Water Code; and

17 (5) the law regulating certain connections to public drinking water, Section 341.033

18 (f).Health and Safety Code.

19 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint a separate advisory
20 committee on each of the following:

21 (1) plumbing;

22 (2) irrigation;

23 (3) air conditioning and refrigeration; and

24 (4) backflow prevention.

1 (b) The board may appoint additional advisory committees as determined to be necessary by a
2 majority of the board.

3 (c) A member of an advisory committee appointed under this section serves a two-year term.
4 An advisory committee member is not entitled to compensation but is entitled to reimbursement for
5 actual and necessary expenses, including travel expenses, incurred in performing duties as a member of
6 the advisory committee.

7 Sec. 12. SEPARATE LICENSES. (a) The board shall issue separate licenses, certificates,
8 permits, or registrations for the programs under Section 10 of this article in which a license, certificate,
9 permit, or registration is issued by the board.

10 (b) The board may issue more than one type of license, certificate, permit, or registration to a
11 person under a law regulated by the board if the person is qualified to hold each of the licenses,
12 certificates, permits, or registrations issued. The board shall adopt rules relating to the issuance of
13 multiple licenses, certificates, permits, or registrations to a person under laws administered by the
14 board.

15 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize, from funds appropriated
16 to it, all necessary disbursements to carry out this article and the laws and programs listed in Section 10
17 of this article.

18 (b) The financial transactions of the board are subject to audit by the state auditor in
19 accordance with Chapter 321, Government Code.

20 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file annually with the governor
21 and the presiding officer of each house of the legislature a complete and detailed written report
22 accounting for all funds received and disbursed by the board during the preceding fiscal year. The
23 annual report must be in the form and reported in the time provided by the General Appropriations Act.

24 Sec. 15. PERSONNEL POLICIES. (a) The executive director or the executive director's

1 designee shall develop an intra-agency career ladder program. The program shall require intra-agency
2 posting of all non-entry level positions concurrently with any public posting.

3 (b) The executive director or the executive director's designee shall develop a system of annual
4 performance evaluations based on measurable job tasks. All merit pay for board employees must be
5 based on the system established under this subsection.

6 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director
7 or the executive director's designee shall prepare and maintain a written policy statement that
8 implements a program of equal employment opportunity to ensure that all personnel decisions are made
9 without regard to race, color, disability, sex, religion, age, or national origin.

10 (b) The policy statement must include:

11 (1) personnel policies, including policies relating to recruitment, evaluation, selection,
12 training, and promotion of personnel, that show the intent of the board to avoid the unlawful
13 employment practices described by Chapter 21, Labor Code; and

14 (2) an analysis of the extent to which the composition of the board's personnel is in
15 accordance with state and federal law and a description of reasonable methods to achieve compliance
16 with state and federal law.

17 (c) The policy statement must:

18 (1) be updated annually;

19 (2) be reviewed by the state Commission on Human Rights for compliance with

20 Subsection (b)(1); and

21 (3) be filed with the governor's office.

22 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of
23 public interest describing the functions of the board and the board's procedures by which complaints
24 are filed with and resolved by the board. The board shall make the information available to the public

1 and appropriate state agencies.

2 (b) The board by rule shall establish methods by which consumers and service recipients are
3 notified of the name, mailing address, and telephone number of the board and the license number of
4 the responsible licensee for the purpose of directing complaints to the board. The board or the
5 responsible licensee, as appropriate, shall provide for that notification:

6 (1) on each registration form, application, or written contract for services of an
7 individual or entity regulated by the board;

8 (2) on a sign prominently displayed in the place of business of each individual or entity
9 regulated by the board; and (2) in hand

10 (3) in a bill for: (3) in hand al or entity regulated by the board;

11 and ok per KEN

12 (4) the company the responsible licensee shall be
13 displayed on both sides of all vehicles used in conjunction with contracting or performing work
14 regulated by the Board.

15 (c) The board shall list along with its regular telephone number the toll-free telephone number
16 that may be called to present a complaint about a health professional if the toll-free number is
17 established under other state law.

18 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board shall develop and
19 implement policies that provide the public with a reasonable opportunity to appear before the board
20 and to speak on any issue under the jurisdiction of the board.

21 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan
22 that describes how a person who does not speak English can be provided reasonable access to the
23 board's programs. The board shall also comply with federal and state laws for program and facility
24 accessibility.

1 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT INFORMATION.

2 (a) A person who is appointed to and qualifies for office as a member of the board may not vote,
3 deliberate, or be counted as a member in attendance at a meeting of the board until the person
4 completes a training program that complies with this section.

5 (b) The training program must provide the person with information regarding:
6 (1) this article and the statutes enforced by the board;
7 (2) the programs operated by the board;
8 (3) the role and functions of the board;
9 (4) the rules of the board with an emphasis on the rules that relate to disciplinary and
10 investigatory authority;

11 (5) the current budget for the board;
12 (6) the results of the most recent formal audit of the board;
13 (7) the requirements of:
14 (A) the open meetings law, Chapter 551, Government Code;
15 (B) the public information law, Chapter 552, Government Code;
16 (C) the administrative procedure law, Chapter 2001, Government Code; and
17 (D) other laws relating to public officials, including conflict-of-interest laws;

18 and

19 (8) any applicable ethics policies adopted by the board or the Texas Ethics
20 Commission.

21 (c) A person appointed to the board is entitled to reimbursement, as provided by the General
22 Appropriations Act, for the travel expenses incurred in attending the training program regardless of
23 whether the attendance at the program occurs before or after the person qualifies for office.

24 (d) The executive director or the executive director's designee shall provide to members of the

1 board and to board employees, as often as necessary, information regarding the requirements for office
2 or employment under this article, including information regarding a person's responsibilities under
3 applicable laws relating to standards of conduct for state officers or employees.

4 Sec. 21. SUNSET PROVISION. The Texas State Board of Mechanical Industries is
5 subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as
6 provided by that chapter, the board is abolished and this article expires September 1, 2011.

7 Sec. 22. PENALTIES. (a) The board shall revoke or suspend a license, endorsement,
8 certification or registration, probate a license, endorsement, certification or registration
9 suspension, or reprimand any person or entity regulated by the Board for any violation of this
10 Act or any regulatory statute administered by the Board or any rule adopted under this Act or
11 any rule adopted under any regulatory statute administered by the Board. A violation of this
12 Act shall include but not be limited to: obtaining a license through error or fraud; having
13 recklessly, willfully, negligently or arbitrarily violated municipal or other political subdivision
14 rules or ordinances regulating any work governed by the Board; making a substantial
15 misrepresentation of services to be provided or which have been provided; making any false
16 promise with intent to influence, persuade, or induce an individual to contract for services.
17 Grounds for suspension or revocation of a license, endorsement, certification or registration
18 due to suspected incompetence or willful violation by licensee may be determined through
19 retesting procedures.

20 (b) The Board may assess an administrative penalty against a person or entity who
21 violates a provision of this article, a law administered by the Board, or a rule or order adopted
22 by the Board as provided by this section.

23 (c) The penalty for each violation may be in an amount not to exceed \$1,000. Each day a
24 violation continues or occurs may be considered a separate violation for purposes of penalty

1 assessment. In determining the amount of the penalty, the board shall consider:

2 (1) the seriousness of the violation, including the nature, circumstances, extent, and
3 gravity of the prohibited acts and the hazard or potential hazard posed to the health or safety of the
4 public;

5 (2) the economic damage to property or the environment caused by the violation;

6 (3) the history of previous violations;

7 (4) the amount necessary to deter future violations;

8 (5) efforts to correct the violation; and

9 (6) any other matter that justice may require.

10 (d) If the Board proposes to assess an administrative penalty, refuse a person's
11 application for licensure, endorsement, certification or registration or to suspend or revoke a
12 person's license, endorsement, certification or registration, the person is entitled to a hearing,
13 if requested, governed by the Administrative Procedure Act, Chapter 2001, Government Code.

14 (e) The executive director or the executive director's staff designee or staff designees
15 shall oversee and conduct investigations, conduct informal conferences, negotiate agreed final
16 orders, draft formal complaints, recommend administrative penalties, and pursue cases
17 involving violations of this Act or any regulatory statute administered by the Board or any rule
18 adopted under this Act or any rule adopted under any regulatory statute administered by the
19 Board at the State Office of Administrative Hearings. Proceedings for assessing administrative
20 penalties, the refusal, suspension, or revocation of a license, endorsement, certification or
21 registration are subject to the Administrative Procedure Act, Chapter 2001, Government
22 Code.

1 (f) Within the 30-day period immediately following the day on which a Board order
2 assessing an administrative penalty to a person or entity becomes final as provided by Section
3 2001.144, Government Code, the person or entity charged with the penalty shall:

4 (1) pay the penalty in full; or

5 (2) if the person files a petition for judicial review contesting either the fact of the
6 violation or the amount of the penalty or contesting both the fact of the violation and the amount of the
7 penalty:

8 (A) forward the amount to the board for placement in an escrow account; or

9 (B) in lieu of payment into escrow, post with the board a supersedeas bond in
10 a form approved by the board for the amount of the penalty, the bond to be effective until all judicial
11 review of the order or decision is final.

12 (g) If a person charged is financially unable to either forward the amount of the penalty for
13 placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person
14 may satisfy the requirements of Subsection (f)(2) of this section by filing with the board an affidavit
15 sworn by the person charged, stating that the person is financially unable to either forward the amount
16 of the penalty or post a bond.

17 (h) If the person charged fails to pay the penalty in full as provided under Subsection (f)(1) of
18 this section or forward the money, post the bond, or file the affidavit as provided by Subsection (f) or
19 (g) of this section, the board may forward the matter to the attorney general for enforcement.

20 (i) Judicial review of the order or decision of the board assessing the penalty shall be under the
21 substantial evidence rule and shall be instituted by filing a petition with a district court in Travis
22 County, as provided by Subchapter G, Chapter 2001, Government Code.

23 (j) If the penalty is reduced or not assessed by the court, the board shall remit to the person

1 charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a
2 release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by
3 the board under this subsection shall be paid at a rate equal to the rate charged on loans to depository
4 institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the
5 date the penalty is paid to the board under Subsection (f) of this section and ending on the date the
6 penalty is remitted.

7 (k) An administrative penalty collected under Sub section (b) of this section shall be
8 deposited in the general revenue fund.

9 (l) A person commits an offense if the person violates this Act or any regulatory statute
10 administered by the Board or any rule adopted under this Act or any rule adopted under any
11 regulatory statute administered by the Board, engages in activities for which a license,
12 endorsement, certification or registration is required without a license, endorsement,
13 certification or registration is issued under this Act, or employs or utilizes an unlicensed,
14 unendorsed, uncertified, or unregistered person to engage in activities for which a license,
15 endorsement, certification or registration is required by this Act. An offense under this
16 subsection is a Class C misdemeanor.

17 (m) A field representative of the board or, within the jurisdiction of that municipality
18 or water district, a municipal inspector or water district inspector or other inspector
19 authorized to inspect work regulated by the board, may issue citations to persons who engage
20 in conduct described by Subsection (l) of this Section.

21 (n) Citations issued under Subsection (l) and Subsection (m) of this Section may be filed
22 in a county justice court or municipal court for adjudication of the offense or offenses.

23 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall adopt rules for a law or

1 program regulated by the board as necessary to comply with any federal regulation that imposes
2 standards or requirements on that law or program.

3 ✓
4 SECTION 2. The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) is
5 amended by adding Section 1A to read as follows:

6 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This Act is
7 administered by the Texas State Board of Mechanical Industries in accordance with Article 9150,
8 Revised Statutes. To the extent of a conflict between this Act and Article 9150, Revised Statutes, that
9 article prevails.

10 (b) Any reference in this Act to the Texas State Board of Plumbing Examiners means the
11 Texas State Board of Mechanical Industries.

12 (c) The Texas State Board of Plumbing Examiners is abolished and the functions of that board
13 are exercised by the Texas State Board of Mechanical Industries.

14 /
15 SECTION 3. The Air Conditioning and Refrigeration Contractor License Law (Article 8861,
16 Vernon's Texas Civil Statutes) is amended by adding Section 1A to read as follows:

17 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED. (a) This
18 Act is administered by the Texas State Board of Mechanical Industries in accordance with Article
19 9150, Revised Statutes. To the extent of a conflict between this Act and Article 9150, Revised
20 Statutes, that article prevails.

21 (b) Any reference in this Act to the Texas Department of Licensing and Regulation, the
22 commissioner of licensing and regulation, or the Air Conditioning and Refrigeration Contractors
23 Advisory Board means the Texas State Board of Mechanical Industries.

24 (c) The Air Conditioning and Refrigeration Contractors Advisory Board is abolished and the
functions of that board and the functions, under this Act, of the Texas Department of Licensing and
Regulation and the commissioner of licensing and regulation are exercised by the Texas State Board

1 **of Mechanical Industries.**

2 SECTION 4. Section 341.033(f), Health and Safety Code, is amended by adding to read as
3 follows:

4 (f)A public drinking water supply may not be connected to a sprinkling, condensing, cooling,
5 plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage
6 of sewage or contaminated water into the drinking water supply. Notwithstanding any other provision
7 of this chapter, this subsection is administered by the Texas State Board of Mechanical Industries in
8 accordance with Article 9150, Revised Statutes. To the extent of a conflict between this chapter and
9 Article 9150, Revised Statutes, regarding the administration of this subsection, Article 9150 prevails.
10 Any reference in this chapter to the Texas Natural Resource Conservation Commission, as it applies to
11 this subsection, means the Texas State Board of Mechanical Industries.

12 SECTION 5. Chapter 372, Health and Safety Code, is amended by adding Section 372.0015
13 to read as follows:

14 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is administered by the
15 Texas State Board of Mechanical Industries in accordance with Article 9150, Revised Statutes. To
16 the extent of a conflict between this chapter and Article 9150, Revised Statutes, that article prevails.

17 (b) Any reference in this chapter to the Texas Natural Resource Conservation Commission
18 means the Texas State Board of Mechanical Industries.

19 SECTION 6. Chapter 34, Water Code, is amended by adding Section 34.0015 to read as
20 follows:

21 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED. (a) This chapter
22 is administered by the Texas State Board of Mechanical Industries in accordance with Article
23 9150, Revised Statutes. To the extent of a conflict between this chapter and Article 9150, Revised
24 Statutes, that article prevails.

1 **(b) Any reference in this chapter to the Texas Natural Resource Conservation Commission or**
2 **the Texas irrigators advisory council means the Texas State Board of Mechanical Industries.**

3 **(c) The Texas irrigators advisory council is abolished and the functions of that board and the**
4 **functions, under this chapter, of the Texas Natural Resource Conservation Commission are exercised by**
5 **the Texas State Board of Mechanical Industries.**

6 SECTION 7. (a) As soon as possible after the effective date of this Act, the governor shall
7 appoint the initial members of the **Texas State Board of Mechanical Industries** in accordance with
8 Article 9150, Revised Statutes, as added by this Act.

9 (b) A person who is serving on the day immediately before the effective date of this Act as a
10 member of the governing body of an agency abolished by this Act is eligible for appointment to the
11 **Texas State Board of Mechanical Industries** if the person meets the requirements set forth in
12 **Section 2, Article 9150, Revised Statutes, as added by this Act.**

13 (c) In making the initial appointments, the governor shall designate members to serve terms as
14 follows:

15 (1) one master plumber member, one licensed backflow prevention specialist member,
16 one plumbing inspector member, **one licensed irrigation installer member**, and one public member
17 serve for terms expiring February 1, 2001;

18 (2) one journeyman plumber member, one air conditioning and refrigeration contractor
19 member, one engineer member, **one air conditioning and refrigeration license A member**, and one
20 public member serve for terms expiring February 1, 2003; and

21 (3) one plumbing contractor member, **one air conditioning and refrigeration**
22 **license B member, licensed irrigation contractor**, and two public members serve for terms expiring
23 February 1, 2005.

24 (d) The **Texas State Board of Mechanical Industries** may not take any action and is not

1 created until the day after the date the last appointee to the initial board takes office. On the date of its
2 creation, the board assumes its functions and:

3 (1) the Air Conditioning and Refrigeration Contractors Advisory Board, Texas State
4 Board of Plumbing Examiners, and Texas irrigators advisory council are abolished;

5 (2) the obligations, rights, contracts, records and other property, and personnel of, and
6 unspent money appropriated to or for, the abolished boards and council or the governing body for the
7 laws or programs transferred to the new board under this Act are transferred to the **Texas State Board**
8 **of Mechanical Industries;**

9 (3) the rules of the abolished boards and council or the governing body for the laws or
10 programs transferred to the new board under this Act are continued in effect as rules of the **Texas State**
11 **Board of Mechanical Industries** until superseded by rule of the new board;

12 (4) the licenses, certificates, permits, or registrations in effect that were issued by the
13 abolished boards or council or the governing body for the laws or programs transferred to the new
14 board under this Act are continued in effect as licenses, certificates, permits, or registrations of the
15 **Texas State Board of Mechanical Industries;**

16 (5) a complaint or investigation pending before the abolished boards or council or the
17 governing body for the laws or programs transferred to the new board under this Act is transferred
18 without change in status to the **Texas State Board of Mechanical Industries;**

19 (6) a contested case pending before the abolished boards and council or the governing
20 body for the laws or programs transferred to the new board under this Act is transferred to the **Texas**
21 **State Board of Mechanical Industries** and actions taken in the proceeding are treated as if taken by
22 the **Texas State Board of Mechanical Industries;** and

23 (7) any reference in a law to the abolished boards or council means the **Texas State**
24 **Board of Mechanical Industries.**

1 (e) Regardless of the changes in law made by this Act, until the date that the Air Conditioning
2 and Refrigeration Contractors Advisory Board, Texas State Board of Plumbing Examiners, and Texas
3 irrigators advisory council are abolished as provided by this section, the boards and council continue in
4 existence and shall administer their functions under the law that governed the boards and council before
5 the effective date of this Act, and the prior law is continued in effect for that purpose.

6 (f) The Texas State Board of Mechanical Industries shall adopt rules under this Act not
7 later than December 1, 1999.

8 SECTION 8. The following laws are repealed:

9 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License Law (Article 6243-101,
10 Vernon's Texas Civil Statutes);

11 (2) Section 3A, Air Conditioning and Refrigeration Contractor License Law (Article
12 8861, Vernon's Texas Civil Statutes); and

13 (3) Section 34.003, Water Code.

14 SECTION 9. This Act takes effect September 1, 1999.

15 SECTION 10. The importance of this legislation and the crowded condition of the calendars
16 in both houses create an emergency and an imperative public necessity that the constitutional rule
17 requiring bills to be read on three several days in each house be suspended, and this rule is hereby
18 suspended.
19
20

2ND READING
ENGROSSMENT

By Yarbrough

H.B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical Industries consists of 15 members as follows:

(1) one member who has at least 10 years of practical experience as a master plumber;

(2) one member who has at least five years of practical experience as a journeyman plumber;

(3) one member who has at least five years of experience as a plumbing contractor;

(4) one member who has at least five years of practical experience as a plumbing inspector;

(5) one member who is a licensed air conditioning and refrigeration contractor;

(6) one member who has held an air conditioning and

1 refrigeration license A for at least five years;

2 (7) one member who has held an air conditioning and
3 refrigeration license B for at least five years;

4 (8) one member who is a licensed irrigation installer
5 for at least 10 years;

6 (9) one member who is a licensed irrigation contractor
7 for at least five years;

8 (10) one member who is a licensed backflow prevention
9 specialist;

10 (11) one member who is a licensed engineer who has
11 professional engineering experience in plumbing design or
12 mechanical design; and

13 (12) four members who are representatives of the
14 public.

15 (b) Members of the board are appointed by the governor with
16 the advice and consent of the senate.

17 (c) Appointments to the board shall be made without regard
18 to the race, color, disability, sex, religion, age, or national
19 origin of the appointees.

20 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
21 shall designate a member of the board as the presiding officer of
22 the board to serve in that capacity at the will of the governor.
23 The board annually shall select an assistant presiding officer and
24 a secretary-treasurer.

25 (b) The board shall hold at least two regular meetings each
26 year. The board may not hold more than four meetings each year
27 unless at least nine members of the board request the presiding

1 officer in writing to call additional meetings.

2 (c) A member of the board is entitled to a per diem as set
3 by the General Appropriations Act for each day the member engages
4 in the business of the board. A member may not receive
5 compensation for travel expenses, including expenses for meals and
6 lodging, other than transportation expenses as provided by the
7 General Appropriations Act.

8 Sec. 4. TERMS. (a) Members of the board are appointed for
9 staggered six-year terms, with five members' terms expiring on
10 February 1 of each odd-numbered year.

11 (b) A member appointed to fill a vacancy shall hold office
12 for the remainder of that term.

13 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
14 a public member of the board if the person or the person's spouse:

15 (1) is registered, certified, or licensed by a
16 regulatory agency in the field of plumbing or mechanical work;

17 (2) is employed by or participates in the management
18 of a business entity or other organization regulated by or
19 receiving money from the board;

20 (3) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization regulated by or receiving money from the board; or

23 (4) uses or receives a substantial amount of tangible
24 goods, services, or money from the board other than compensation or
25 reimbursement authorized by law for board membership, attendance,
26 or expenses.

27 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this

1 section, "Texas trade association" means a cooperative and
2 voluntarily joined association of business or professional
3 competitors in this state designed to assist its members and its
4 industry or profession in dealing with mutual business or
5 professional problems and in promoting their common interest.

6 (b) A person may not be a member of the board and may not be
7 a board employee employed in a "bona fide executive,
8 administrative, or professional capacity," as that phrase is used
9 for purposes of establishing an exemption to the overtime
10 provisions of the federal Fair Labor Standards Act of 1938 (29
11 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in the field of plumbing or
14 mechanical work; or

15 (2) the person's spouse is an officer, manager, or
16 paid consultant of a Texas trade association in the field of
17 plumbing or mechanical work.

18 (c) A person may not be a member of the board or act as the
19 general counsel to the board if the person is required to register
20 as a lobbyist under Chapter 305, Government Code, because of the
21 person's activities for compensation on behalf of a profession
22 related to the operation of the board.

23 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
24 as a member of the board or act as the general counsel to the board
25 if the person is required to register as a lobbyist under Chapter
26 305, Government Code, because of the person's activities for
27 compensation on behalf of a profession related to the operation of

1 the board.

2 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
3 for removal from the board that a member:

4 (1) does not have at the time of taking office the
5 qualifications required by Section 2 of this article;

6 (2) does not maintain during service on the board the
7 qualifications required by Section 2 of this article;

8 (3) is ineligible for membership under Section 5, 6,
9 or 7 of this article;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the
12 member's term; or

13 (5) is absent from more than half of the regularly
14 scheduled board meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority
16 vote of the board.

17 (b) The validity of an action of the board is not affected
18 by the fact that it is taken when a ground for removal of a board
19 member exists.

20 (c) If the executive director has knowledge that a potential
21 ground for removal exists, the executive director shall notify the
22 presiding officer of the board of the potential ground. The
23 presiding officer shall then notify the governor and the attorney
24 general that a potential ground for removal exists. If the
25 potential ground for removal involves the presiding officer, the
26 executive director shall notify the next highest ranking officer of
27 the board, who shall then notify the governor and the attorney

1 general that a potential ground for removal exists.

2 Sec. 9. STAFF. (a) The board shall employ an executive
3 director and administrative and clerical employees as necessary to
4 carry out the board's functions.

5 (b) The board shall develop and implement policies that
6 clearly separate the policymaking responsibilities of the board and
7 the management responsibilities of the executive director and staff
8 of the board.

9 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
10 administer and enforce:

11 (1) The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes);

13 (2) the law regulating environmental performance
14 standards for plumbing fixtures, Chapter 372, Health and Safety
15 Code;

16 (3) the Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes);

18 (4) the law regulating irrigators, Chapter 34, Water
19 Code; and

20 (5) the law regulating certain connections to public
21 drinking water, Section 341.033(f), Health and Safety Code.

22 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
23 a separate advisory committee on each of the following:

24 (1) plumbing;

25 (2) irrigation;

26 (3) air conditioning and refrigeration; and

27 (4) backflow prevention.

1 (b) The board may appoint additional advisory committees as
2 determined to be necessary by a majority of the board.

3 (c) A member of an advisory committee appointed under this
4 section serves a two-year term. An advisory committee member is
5 not entitled to compensation but is entitled to reimbursement for
6 actual and necessary expenses, including travel expenses, incurred
7 in performing duties as a member of the advisory committee.

8 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
9 separate licenses, certificates, permits, or registrations for the
10 programs under Section 10 of this article in which a license,
11 certificate, permit, or registration is issued by the board.

12 (b) The board may issue more than one type of license,
13 certificate, permit, or registration to a person under a law
14 regulated by the board if the person is qualified to hold each of
15 the licenses, certificates, permits, or registrations issued. The
16 board shall adopt rules relating to the issuance of multiple
17 licenses, certificates, permits, or registrations to a person under
18 laws administered by the board.

19 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
20 from funds appropriated to it, all necessary disbursements to carry
21 out this article and the laws and programs listed in Section 10 of
22 this article.

23 (b) The financial transactions of the board are subject to
24 audit by the state auditor in accordance with Chapter 321,
25 Government Code.

26 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
27 annually with the governor and the presiding officer of each house

1 of the legislature a complete and detailed written report
2 accounting for all funds received and disbursed by the board during
3 the preceding fiscal year. The annual report must be in the form
4 and reported in the time provided by the General Appropriations
5 Act.

6 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
7 the executive director's designee shall develop an intra-agency
8 career ladder program. The program shall require intra-agency
9 posting of all nonentry level positions concurrently with any
10 public posting.

11 (b) The executive director or the executive director's
12 designee shall develop a system of annual performance evaluations
13 based on measurable job tasks. All merit pay for board employees
14 must be based on the system established under this subsection.

15 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
16 executive director or the executive director's designee shall
17 prepare and maintain a written policy statement that implements a
18 program of equal employment opportunity to ensure that all
19 personnel decisions are made without regard to race, color,
20 disability, sex, religion, age, or national origin.

21 (b) The policy statement must include:

22 (1) personnel policies, including policies relating to
23 recruitment, evaluation, selection, training, and promotion of
24 personnel, that show the intent of the board to avoid the unlawful
25 employment practices described by Chapter 21, Labor Code; and

26 (2) an analysis of the extent to which the composition
27 of the board's personnel is in accordance with state and federal

1 law and a description of reasonable methods to achieve compliance
2 with state and federal law.

3 (c) The policy statement must:

4 (1) be updated annually;

5 (2) be reviewed by the state Commission on Human
6 Rights for compliance with Subsection (b)(1); and

7 (3) be filed with the governor's office.

8 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
9 prepare information of public interest describing the functions of
10 the board and the board's procedures by which complaints are filed
11 with and resolved by the board. The board shall make the
12 information available to the public and appropriate state agencies.

13 (b) The board by rule shall establish methods by which
14 consumers and service recipients are notified of the name, mailing
15 address, and telephone number of the board and the license number
16 of the responsible licensee for the purpose of directing complaints
17 to the board. The board or the responsible licensee, as
18 appropriate, shall provide for that notification:

19 (1) on each registration form, application, or written
20 contract for services of an individual or entity regulated by the
21 board;

22 (2) on a sign prominently displayed in the place of
23 business of each individual or entity regulated by the board; and

24 (3) in a bill for service provided by an individual or
25 entity regulated by the board; and

26 (4) the company name and license number of the
27 responsible licensee shall be displayed on both sides of all

1 vehicles used in conjunction with contracting or performing work
2 regulated by the board.

3 (c) The board shall list along with its regular telephone
4 number the toll-free telephone number that may be called to present
5 a complaint about a health professional if the toll-free number is
6 established under other state law.

7 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
8 shall develop and implement policies that provide the public with a
9 reasonable opportunity to appear before the board and to speak on
10 any issue under the jurisdiction of the board.

11 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
12 maintain a written plan that describes how a person who does not
13 speak English can be provided reasonable access to the board's
14 programs. The board shall also comply with federal and state laws
15 for program and facility accessibility.

16 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
17 INFORMATION. (a) A person who is appointed to and qualifies for
18 office as a member of the board may not vote, deliberate, or be
19 counted as a member in attendance at a meeting of the board until
20 the person completes a training program that complies with this
21 section.

22 (b) The training program must provide the person with
23 information regarding:

24 (1) this article and the statutes enforced by the
25 board;

26 (2) the programs operated by the board;

27 (3) the role and functions of the board;

1 (4) the rules of the board with an emphasis on the
2 rules that relate to disciplinary and investigatory authority;

3 (5) the current budget for the board;

4 (6) the results of the most recent formal audit of the
5 board;

6 (7) the requirements of:

7 (A) the open meetings law, Chapter 551,
8 Government Code;

9 (B) the public information law, Chapter 552,
10 Government Code;

11 (C) the administrative procedure law, Chapter
12 2001, Government Code; and

13 (D) other laws relating to public officials,
14 including conflict-of-interest laws; and

15 (8) any applicable ethics policies adopted by the
16 board or the Texas Ethics Commission.

17 (c) A person appointed to the board is entitled to
18 reimbursement, as provided by the General Appropriations Act, for
19 the travel expenses incurred in attending the training program
20 regardless of whether the attendance at the program occurs before
21 or after the person qualifies for office.

22 (d) The executive director or the executive director's
23 designee shall provide to members of the board and to board
24 employees, as often as necessary, information regarding the
25 requirements for office or employment under this article, including
26 information regarding a person's responsibilities under applicable
27 laws relating to standards of conduct for state officers or

1 employees.

2 Sec. 21. SUNSET PROVISION. The Texas State Board of
3 Mechanical Industries is subject to Chapter 325, Government Code
4 (Texas Sunset Act). Unless continued in existence as provided by
5 that chapter, the board is abolished and this article expires
6 September 1, 2011.

7 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
8 a license, endorsement, certification, or registration, probate a
9 license, endorsement, certification, or registration suspension, or
10 reprimand any person or entity regulated by the board for any
11 violation of this article or any regulatory statute administered by
12 the board or any rule adopted under this article or any rule
13 adopted under any regulatory statute administered by the board. A
14 violation of this article shall include but not be limited to:
15 obtaining a license through error or fraud; having recklessly,
16 wilfully, negligently, or arbitrarily violated municipal or other
17 political subdivision rules or ordinances regulating any work
18 governed by the board; making a substantial misrepresentation of
19 services to be provided or which have been provided; making any
20 false promise with intent to influence, persuade, or induce an
21 individual to contract for services. Grounds for suspension or
22 revocation of a license, endorsement, certification, or
23 registration due to suspected incompetence or wilful violation by a
24 licensee may be determined through retesting procedures.

25 (b) The board may assess an administrative penalty against a
26 person or entity who violates a provision of this article, a law
27 administered by the board, or a rule or order adopted by the board

1 as provided by this section.

2 (c) The penalty for each violation may be in an amount not
3 to exceed \$1,000. Each day a violation continues or occurs may be
4 considered a separate violation for purposes of penalty assessment.
5 In determining the amount of the penalty, the board shall consider:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, extent, and gravity of the prohibited acts
8 and the hazard or potential hazard posed to the health or safety of
9 the public;

10 (2) the economic damage to property or the environment
11 caused by the violation;

12 (3) the history of previous violations;

13 (4) the amount necessary to deter future violations;

14 (5) efforts to correct the violation; and

15 (6) any other matter that justice may require.

16 (d) If the board proposes to assess an administrative
17 penalty, refuse a person's application for licensure, endorsement,
18 certification, or registration, or suspend or revoke a person's
19 license, endorsement, certification, or registration, the person is
20 entitled to a hearing, if requested, governed by the Administrative
21 Procedure Act, Chapter 2001, Government Code.

22 (e) The executive director or the executive director's staff
23 designee or staff designees shall oversee and conduct
24 investigations, conduct informal conferences, negotiate agreed
25 final orders, draft formal complaints, recommend administrative
26 penalties, and pursue cases involving violations of this article or
27 any regulatory statute administered by the board or any rule

1 adopted under this article or any rule adopted under any regulatory
2 statute administered by the board at the State Office of
3 Administrative Hearings. Proceedings for assessing administrative
4 penalties or for the refusal, suspension, or revocation of a
5 license, endorsement, certification, or registration are subject to
6 the Administrative Procedure Act, Chapter 2001, Government Code.

7 (f) Within the 30-day period immediately following the day
8 on which a board order assessing an administrative penalty to a
9 person or entity becomes final as provided by Section 2001.144,
10 Government Code, the person or entity charged with the penalty
11 shall:

12 (1) pay the penalty in full; or

13 (2) if the person files a petition for judicial review
14 contesting either the fact of the violation or the amount of the
15 penalty or contesting both the fact of the violation and the amount
16 of the penalty:

17 (A) forward the amount to the board for
18 placement in an escrow account; or

19 (B) in lieu of payment into escrow, post with
20 the board a supersedeas bond in a form approved by the board for
21 the amount of the penalty, the bond to be effective until all
22 judicial review of the order or decision is final.

23 (g) If a person charged is financially unable to either
24 forward the amount of the penalty for placement in an escrow
25 account or post a supersedeas bond for the amount of the penalty,
26 the person may satisfy the requirements of Subsection (f)(2) of
27 this section by filing with the board an affidavit sworn by the

1 person charged, stating that the person is financially unable to
2 either forward the amount of the penalty or post a bond.

3 (h) If the person charged fails to pay the penalty in full
4 as provided under Subsection (f)(1) of this section or forward the
5 money, post the bond, or file the affidavit as provided by
6 Subsection (f) or (g) of this section, the board may forward the
7 matter to the attorney general for enforcement.

8 (i) Judicial review of the order or decision of the board
9 assessing the penalty shall be under the substantial evidence rule
10 and shall be instituted by filing a petition with a district court
11 in Travis County, as provided by Subchapter G, Chapter 2001,
12 Government Code.

13 (j) If the penalty is reduced or not assessed by the court,
14 the board shall remit to the person charged the appropriate amount
15 plus accrued interest if the penalty has been paid or shall execute
16 a release of the bond if a supersedeas bond has been posted. The
17 accrued interest on amounts remitted by the board under this
18 subsection shall be paid at a rate equal to the rate charged on
19 loans to depository institutions by the New York Federal Reserve
20 Bank and shall be paid for the period beginning on the date the
21 penalty is paid to the board under Subsection (f) of this section
22 and ending on the date the penalty is remitted.

23 (k) An administrative penalty collected under Subsection (b)
24 of this section shall be deposited in the general revenue fund.

25 (l) A person commits an offense if the person violates this
26 article or any regulatory statute administered by the board or any
27 rule adopted under this article or any rule adopted under any

1 regulatory statute administered by the board, engages in activities
2 for which a license, endorsement, certification, or registration is
3 required without a license, endorsement, certification, or
4 registration issued under this article, or employs or utilizes an
5 unlicensed, unendorsed, uncertified, or unregistered person to
6 engage in activities for which a license, endorsement,
7 certification, or registration is required by this article. An
8 offense under this subsection is a Class C misdemeanor.

9 (m) A field representative of the board or, within the
10 jurisdiction of that municipality or water district, a municipal
11 inspector or water district inspector or other inspector authorized
12 to inspect work regulated by the board, may issue citations to
13 persons who engage in conduct described by Subsection (l) of this
14 section.

15 (n) Citations issued under Subsection (l) and Subsection (m)
16 of this section may be filed in a county justice court or municipal
17 court for adjudication of the offense or offenses.

18 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
19 adopt rules for a law or program regulated by the board as
20 necessary to comply with any federal regulation that imposes
21 standards or requirements on that law or program.

22 SECTION 2. The Plumbing License Law (Article 6243-101,
23 Vernon's Texas Civil Statutes) is amended by adding Section 1A to
24 read as follows:

25 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
26 Act is administered by the Texas State Board of Mechanical
27 Industries in accordance with Article 9150, Revised Statutes. To

1 the extent of a conflict between this Act and Article 9150, Revised
2 Statutes, that article prevails.

3 (b) Any reference in this Act to the Texas State Board of
4 Plumbing Examiners means the Texas State Board of Mechanical
5 Industries.

6 (c) The Texas State Board of Plumbing Examiners is abolished
7 and the functions of that board are exercised by the Texas State
8 Board of Mechanical Industries.

9 SECTION 3. The Air Conditioning and Refrigeration Contractor
10 License Law (Article 8861, Vernon's Texas Civil Statutes) is
11 amended by adding Section 1A to read as follows:

12 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

13 (a) This Act is administered by the Texas State Board of
14 Mechanical Industries in accordance with Article 9150, Revised
15 Statutes. To the extent of a conflict between this Act and Article
16 9150, Revised Statutes, that article prevails.

17 (b) Any reference in this Act to the Texas Department of
18 Licensing and Regulation, the commissioner of licensing and
19 regulation, or the Air Conditioning and Refrigeration Contractors
20 Advisory Board means the Texas State Board of Mechanical
21 Industries.

22 (c) The Air Conditioning and Refrigeration Contractors
23 Advisory Board is abolished and the functions of that board and the
24 functions, under this Act, of the Texas Department of Licensing and
25 Regulation and the commissioner of licensing and regulation are
26 exercised by the Texas State Board of Mechanical Industries.

27 SECTION 4. Section 341.033(f), Health and Safety Code, is

1 amended to read as follows:

2 (f) A public drinking water supply may not be connected to a
3 sprinkling, condensing, cooling, plumbing, or other system unless
4 the connection is designed to ensure against a backflow or
5 siphonage of sewage or contaminated water into the drinking water
6 supply. Notwithstanding any other provision of this chapter, this
7 subsection is administered by the Texas State Board of Mechanical
8 Industries in accordance with Article 9150, Revised Statutes. To
9 the extent of a conflict between this chapter and Article 9150,
10 Revised Statutes, regarding the administration of this subsection,
11 Article 9150 prevails. Any reference in this chapter to the Texas
12 Natural Resource Conservation Commission, as it applies to this
13 subsection, means the Texas State Board of Mechanical Industries.

14 SECTION 5. Chapter 372, Health and Safety Code, is amended
15 by adding Section 372.0015 to read as follows:

16 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
17 administered by the Texas State Board of Mechanical Industries in
18 accordance with Article 9150, Revised Statutes. To the extent of a
19 conflict between this chapter and Article 9150, Revised Statutes,
20 that article prevails.

21 (b) Any reference in this chapter to the Texas Natural
22 Resource Conservation Commission means the Texas State Board of
23 Mechanical Industries.

24 SECTION 6. Chapter 34, Water Code, is amended by adding
25 Section 34.0015 to read as follows:

26 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.
27 (a) This chapter is administered by the Texas State Board of

1 Mechanical Industries in accordance with Article 9150, Revised
2 Statutes. To the extent of a conflict between this chapter and
3 Article 9150, Revised Statutes, that article prevails.

4 (b) Any reference in this chapter to the Texas Natural
5 Resource Conservation Commission or the Texas irrigators advisory
6 council means the Texas State Board of Mechanical Industries.

7 (c) The Texas irrigators advisory council is abolished and
8 the functions of that board and the functions, under this chapter,
9 of the Texas Natural Resource Conservation Commission are exercised
10 by the Texas State Board of Mechanical Industries.

11 SECTION 7. (a) As soon as possible after the effective date
12 of this Act, the governor shall appoint the initial members of the
13 Texas State Board of Mechanical Industries in accordance with
14 Article 9150, Revised Statutes, as added by this Act.

15 (b) A person who is serving on the day immediately before
16 the effective date of this Act as a member of the governing body of
17 an agency abolished by this Act is eligible for appointment to the
18 Texas State Board of Mechanical Industries if the person meets the
19 requirements set forth in Section 2, Article 9150, Revised
20 Statutes, as added by this Act.

21 (c) In making the initial appointments, the governor shall
22 designate members to serve terms as follows:

23 (1) one master plumber member, one licensed backflow
24 prevention specialist member, one plumbing inspector member, one
25 licensed irrigation installer member, and one public member serve
26 for terms expiring February 1, 2001;

27 (2) one journeyman plumber member, one air

1 conditioning and refrigeration contractor member, one engineer
2 member, one air conditioning and refrigeration license A member,
3 and one public member serve for terms expiring February 1, 2003;
4 and

5 (3) one plumbing contractor member, one air
6 conditioning and refrigeration license B member, one licensed
7 irrigation contractor, and two public members serve for terms
8 expiring February 1, 2005.

9 (d) The Texas State Board of Mechanical Industries may not
10 take any action and is not created until the day after the date the
11 last appointee to the initial board takes office. On the date of
12 its creation, the board assumes its functions and:

13 (1) the Air Conditioning and Refrigeration Contractors
14 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
15 irrigators advisory council are abolished;

16 (2) the obligations, rights, contracts, records and
17 other property, and personnel of, and unspent money appropriated to
18 or for, the abolished boards and council or the governing body for
19 the laws or programs transferred to the new board under this Act
20 are transferred to the Texas State Board of Mechanical Industries;

21 (3) the rules of the abolished boards and council or
22 the governing body for the laws or programs transferred to the new
23 board under this Act are continued in effect as rules of the Texas
24 State Board of Mechanical Industries until superseded by rule of
25 the new board;

26 (4) the licenses, certificates, permits, or
27 registrations in effect that were issued by the abolished boards or

1 council or the governing body for the laws or programs transferred
2 to the new board under this Act are continued in effect as
3 licenses, certificates, permits, or registrations of the Texas
4 State Board of Mechanical Industries;

5 (5) a complaint or investigation pending before the
6 abolished boards or council or the governing body for the laws or
7 programs transferred to the new board under this Act is transferred
8 without change in status to the Texas State Board of Mechanical
9 Industries;

10 (6) a contested case pending before the abolished
11 boards and council or the governing body for the laws or programs
12 transferred to the new board under this Act is transferred to the
13 Texas State Board of Mechanical Industries and actions taken in the
14 proceeding are treated as if taken by the Texas State Board of
15 Mechanical Industries; and

16 (7) any reference in a law to the abolished boards or
17 council means the Texas State Board of Mechanical Industries.

18 (e) Regardless of the changes in law made by this Act, until
19 the date that the Air Conditioning and Refrigeration Contractors
20 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
21 irrigators advisory council are abolished as provided by this
22 section, the boards and council continue in existence and shall
23 administer their functions under the law that governed the boards
24 and council before the effective date of this Act, and the prior
25 law is continued in effect for that purpose.

26 (f) The Texas State Board of Mechanical Industries shall
27 adopt rules under this Act not later than December 1, 1999.

1 SECTION 8. The following laws are repealed:

2 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
3 Law (Article 6243-101, Vernon's Texas Civil Statutes);

4 (2) Section 3A, Air Conditioning and Refrigeration
5 Contractor License Law (Article 8861, Vernon's Texas Civil
6 Statutes); and

7 (3) Section 34.003, Water Code.

8 SECTION 9. This Act takes effect September 1, 1999.

9 SECTION 10. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

HOUSE ENGROSSMENT

By Yarbrough

H.B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical Industries consists of 15 members as follows:

(1) one member who has at least 10 years of practical experience as a master plumber;

(2) one member who has at least five years of practical experience as a journeyman plumber;

(3) one member who has at least five years of experience as a plumbing contractor;

(4) one member who has at least five years of practical experience as a plumbing inspector;

(5) one member who is a licensed air conditioning and refrigeration contractor;

(6) one member who has held an air conditioning and

1 refrigeration license A for at least five years;

2 (7) one member who has held an air conditioning and
3 refrigeration license B for at least five years;

4 (8) one member who is a licensed irrigation installer
5 for at least 10 years;

6 (9) one member who is a licensed irrigation contractor
7 for at least five years;

8 (10) one member who is a licensed backflow prevention
9 specialist;

10 (11) one member who is a licensed engineer who has
11 professional engineering experience in plumbing design or
12 mechanical design; and

13 (12) four members who are representatives of the
14 public.

15 (b) Members of the board are appointed by the governor with
16 the advice and consent of the senate.

17 (c) Appointments to the board shall be made without regard
18 to the race, color, disability, sex, religion, age, or national
19 origin of the appointees.

20 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
21 shall designate a member of the board as the presiding officer of
22 the board to serve in that capacity at the will of the governor.
23 The board annually shall select an assistant presiding officer and
24 a secretary-treasurer.

25 (b) The board shall hold at least two regular meetings each
26 year. The board may not hold more than four meetings each year
27 unless at least nine members of the board request the presiding

1 officer in writing to call additional meetings.

2 (c) A member of the board is entitled to a per diem as set
3 by the General Appropriations Act for each day the member engages
4 in the business of the board. A member may not receive
5 compensation for travel expenses, including expenses for meals and
6 lodging, other than transportation expenses as provided by the
7 General Appropriations Act.

8 Sec. 4. TERMS. (a) Members of the board are appointed for
9 staggered six-year terms, with five members' terms expiring on
10 February 1 of each odd-numbered year.

11 (b) A member appointed to fill a vacancy shall hold office
12 for the remainder of that term.

13 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
14 a public member of the board if the person or the person's spouse:

15 (1) is registered, certified, or licensed by a
16 regulatory agency in the field of plumbing or mechanical work;

17 (2) is employed by or participates in the management
18 of a business entity or other organization regulated by or
19 receiving money from the board;

20 (3) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization regulated by or receiving money from the board; or

23 (4) uses or receives a substantial amount of tangible
24 goods, services, or money from the board other than compensation or
25 reimbursement authorized by law for board membership, attendance,
26 or expenses.

27 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this

1 section, "Texas trade association" means a cooperative and
2 voluntarily joined association of business or professional
3 competitors in this state designed to assist its members and its
4 industry or profession in dealing with mutual business or
5 professional problems and in promoting their common interest.

6 (b) A person may not be a member of the board and may not be
7 a board employee employed in a "bona fide executive,
8 administrative, or professional capacity," as that phrase is used
9 for purposes of establishing an exemption to the overtime
10 provisions of the federal Fair Labor Standards Act of 1938 (29
11 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in the field of plumbing or
14 mechanical work; or

15 (2) the person's spouse is an officer, manager, or
16 paid consultant of a Texas trade association in the field of
17 plumbing or mechanical work.

18 (c) A person may not be a member of the board or act as the
19 general counsel to the board if the person is required to register
20 as a lobbyist under Chapter 305, Government Code, because of the
21 person's activities for compensation on behalf of a profession
22 related to the operation of the board.

23 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
24 as a member of the board or act as the general counsel to the board
25 if the person is required to register as a lobbyist under Chapter
26 305, Government Code, because of the person's activities for
27 compensation on behalf of a profession related to the operation of

1 the board.

2 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
3 for removal from the board that a member:

4 (1) does not have at the time of taking office the
5 qualifications required by Section 2 of this article;

6 (2) does not maintain during service on the board the
7 qualifications required by Section 2 of this article;

8 (3) is ineligible for membership under Section 5, 6,
9 or 7 of this article;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the
12 member's term; or

13 (5) is absent from more than half of the regularly
14 scheduled board meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority
16 vote of the board.

17 (b) The validity of an action of the board is not affected
18 by the fact that it is taken when a ground for removal of a board
19 member exists.

20 (c) If the executive director has knowledge that a potential
21 ground for removal exists, the executive director shall notify the
22 presiding officer of the board of the potential ground. The
23 presiding officer shall then notify the governor and the attorney
24 general that a potential ground for removal exists. If the
25 potential ground for removal involves the presiding officer, the
26 executive director shall notify the next highest ranking officer of
27 the board, who shall then notify the governor and the attorney

1 general that a potential ground for removal exists.

2 Sec. 9. STAFF. (a) The board shall employ an executive
3 director and administrative and clerical employees as necessary to
4 carry out the board's functions.

5 (b) The board shall develop and implement policies that
6 clearly separate the policymaking responsibilities of the board and
7 the management responsibilities of the executive director and staff
8 of the board.

9 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
10 administer and enforce:

11 (1) The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes);

13 (2) the law regulating environmental performance
14 standards for plumbing fixtures, Chapter 372, Health and Safety
15 Code;

16 (3) the Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes);

18 (4) the law regulating irrigators, Chapter 34, Water
19 Code; and

20 (5) the law regulating certain connections to public
21 drinking water, Section 341.033(f), Health and Safety Code.

22 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
23 a separate advisory committee on each of the following:

24 (1) plumbing;

25 (2) irrigation;

26 (3) air conditioning and refrigeration; and

27 (4) backflow prevention.

1 (b) The board may appoint additional advisory committees as
2 determined to be necessary by a majority of the board.

3 (c) A member of an advisory committee appointed under this
4 section serves a two-year term. An advisory committee member is
5 not entitled to compensation but is entitled to reimbursement for
6 actual and necessary expenses, including travel expenses, incurred
7 in performing duties as a member of the advisory committee.

8 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
9 separate licenses, certificates, permits, or registrations for the
10 programs under Section 10 of this article in which a license,
11 certificate, permit, or registration is issued by the board.

12 (b) The board may issue more than one type of license,
13 certificate, permit, or registration to a person under a law
14 regulated by the board if the person is qualified to hold each of
15 the licenses, certificates, permits, or registrations issued. The
16 board shall adopt rules relating to the issuance of multiple
17 licenses, certificates, permits, or registrations to a person under
18 laws administered by the board.

19 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
20 from funds appropriated to it, all necessary disbursements to carry
21 out this article and the laws and programs listed in Section 10 of
22 this article.

23 (b) The financial transactions of the board are subject to
24 audit by the state auditor in accordance with Chapter 321,
25 Government Code.

26 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
27 annually with the governor and the presiding officer of each house

1 of the legislature a complete and detailed written report
2 accounting for all funds received and disbursed by the board during
3 the preceding fiscal year. The annual report must be in the form
4 and reported in the time provided by the General Appropriations
5 Act.

6 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
7 the executive director's designee shall develop an intra-agency
8 career ladder program. The program shall require intra-agency
9 posting of all nonentry level positions concurrently with any
10 public posting.

11 (b) The executive director or the executive director's
12 designee shall develop a system of annual performance evaluations
13 based on measurable job tasks. All merit pay for board employees
14 must be based on the system established under this subsection.

15 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
16 executive director or the executive director's designee shall
17 prepare and maintain a written policy statement that implements a
18 program of equal employment opportunity to ensure that all
19 personnel decisions are made without regard to race, color,
20 disability, sex, religion, age, or national origin.

21 (b) The policy statement must include:

22 (1) personnel policies, including policies relating to
23 recruitment, evaluation, selection, training, and promotion of
24 personnel, that show the intent of the board to avoid the unlawful
25 employment practices described by Chapter 21, Labor Code; and

26 (2) an analysis of the extent to which the composition
27 of the board's personnel is in accordance with state and federal

1 law and a description of reasonable methods to achieve compliance
2 with state and federal law.

3 (c) The policy statement must:

4 (1) be updated annually;

5 (2) be reviewed by the state Commission on Human
6 Rights for compliance with Subsection (b)(1); and

7 (3) be filed with the governor's office.

8 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
9 prepare information of public interest describing the functions of
10 the board and the board's procedures by which complaints are filed
11 with and resolved by the board. The board shall make the
12 information available to the public and appropriate state agencies.

13 (b) The board by rule shall establish methods by which
14 consumers and service recipients are notified of the name, mailing
15 address, and telephone number of the board and the license number
16 of the responsible licensee for the purpose of directing complaints
17 to the board. The board or the responsible licensee, as
18 appropriate, shall provide for that notification:

19 (1) on each registration form, application, or written
20 contract for services of an individual or entity regulated by the
21 board;

22 (2) on a sign prominently displayed in the place of
23 business of each individual or entity regulated by the board; and

24 (3) in a bill for service provided by an individual or
25 entity regulated by the board; and

26 (4) the company name and license number of the
27 responsible licensee shall be displayed on both sides of all

1 vehicles used in conjunction with contracting or performing work
2 regulated by the board.

3 (c) The board shall list along with its regular telephone
4 number the toll-free telephone number that may be called to present
5 a complaint about a health professional if the toll-free number is
6 established under other state law.

7 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
8 shall develop and implement policies that provide the public with a
9 reasonable opportunity to appear before the board and to speak on
10 any issue under the jurisdiction of the board.

11 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
12 maintain a written plan that describes how a person who does not
13 speak English can be provided reasonable access to the board's
14 programs. The board shall also comply with federal and state laws
15 for program and facility accessibility.

16 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
17 INFORMATION. (a) A person who is appointed to and qualifies for
18 office as a member of the board may not vote, deliberate, or be
19 counted as a member in attendance at a meeting of the board until
20 the person completes a training program that complies with this
21 section.

22 (b) The training program must provide the person with
23 information regarding:

24 (1) this article and the statutes enforced by the
25 board;

26 (2) the programs operated by the board;

27 (3) the role and functions of the board;

1 (4) the rules of the board with an emphasis on the
2 rules that relate to disciplinary and investigatory authority;

3 (5) the current budget for the board;

4 (6) the results of the most recent formal audit of the
5 board;

6 (7) the requirements of:

7 (A) the open meetings law, Chapter 551,
8 Government Code;

9 (B) the public information law, Chapter 552,
10 Government Code;

11 (C) the administrative procedure law, Chapter
12 2001, Government Code; and

13 (D) other laws relating to public officials,
14 including conflict-of-interest laws; and

15 (8) any applicable ethics policies adopted by the
16 board or the Texas Ethics Commission.

17 (c) A person appointed to the board is entitled to
18 reimbursement, as provided by the General Appropriations Act, for
19 the travel expenses incurred in attending the training program
20 regardless of whether the attendance at the program occurs before
21 or after the person qualifies for office.

22 (d) The executive director or the executive director's
23 designee shall provide to members of the board and to board
24 employees, as often as necessary, information regarding the
25 requirements for office or employment under this article, including
26 information regarding a person's responsibilities under applicable
27 laws relating to standards of conduct for state officers or

1 employees.

2 Sec. 21. SUNSET PROVISION. The Texas State Board of
3 Mechanical Industries is subject to Chapter 325, Government Code
4 (Texas Sunset Act). Unless continued in existence as provided by
5 that chapter, the board is abolished and this article expires
6 September 1, 2011.

7 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
8 a license, endorsement, certification, or registration, probate a
9 license, endorsement, certification, or registration suspension, or
10 reprimand any person or entity regulated by the board for any
11 violation of this article or any regulatory statute administered by
12 the board or any rule adopted under this article or any rule
13 adopted under any regulatory statute administered by the board. A
14 violation of this article shall include but not be limited to:
15 obtaining a license through error or fraud; having recklessly,
16 wilfully, negligently, or arbitrarily violated municipal or other
17 political subdivision rules or ordinances regulating any work
18 governed by the board; making a substantial misrepresentation of
19 services to be provided or which have been provided; making any
20 false promise with intent to influence, persuade, or induce an
21 individual to contract for services. Grounds for suspension or
22 revocation of a license, endorsement, certification, or
23 registration due to suspected incompetence or wilful violation by a
24 licensee may be determined through retesting procedures.

25 (b) The board may assess an administrative penalty against a
26 person or entity who violates a provision of this article, a law
27 administered by the board, or a rule or order adopted by the board

1 as provided by this section.

2 (c) The penalty for each violation may be in an amount not
3 to exceed \$1,000. Each day a violation continues or occurs may be
4 considered a separate violation for purposes of penalty assessment.
5 In determining the amount of the penalty, the board shall consider:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, extent, and gravity of the prohibited acts
8 and the hazard or potential hazard posed to the health or safety of
9 the public;

10 (2) the economic damage to property or the environment
11 caused by the violation;

12 (3) the history of previous violations;

13 (4) the amount necessary to deter future violations;

14 (5) efforts to correct the violation; and

15 (6) any other matter that justice may require.

16 (d) If the board proposes to assess an administrative
17 penalty, refuse a person's application for licensure, endorsement,
18 certification, or registration, or suspend or revoke a person's
19 license, endorsement, certification, or registration, the person is
20 entitled to a hearing, if requested, governed by the Administrative
21 Procedure Act, Chapter 2001, Government Code.

22 (e) The executive director or the executive director's staff
23 designee or staff designees shall oversee and conduct
24 investigations, conduct informal conferences, negotiate agreed
25 final orders, draft formal complaints, recommend administrative
26 penalties, and pursue cases involving violations of this article or
27 any regulatory statute administered by the board or any rule

1 adopted under this article or any rule adopted under any regulatory
2 statute administered by the board at the State Office of
3 Administrative Hearings. Proceedings for assessing administrative
4 penalties or for the refusal, suspension, or revocation of a
5 license, endorsement, certification, or registration are subject to
6 the Administrative Procedure Act, Chapter 2001, Government Code.

7 (f) Within the 30-day period immediately following the day
8 on which a board order assessing an administrative penalty to a
9 person or entity becomes final as provided by Section 2001.144,
10 Government Code, the person or entity charged with the penalty
11 shall:

12 (1) pay the penalty in full; or

13 (2) if the person files a petition for judicial review
14 contesting either the fact of the violation or the amount of the
15 penalty or contesting both the fact of the violation and the amount
16 of the penalty:

17 (A) forward the amount to the board for
18 placement in an escrow account; or

19 (B) in lieu of payment into escrow, post with
20 the board a supersedeas bond in a form approved by the board for
21 the amount of the penalty, the bond to be effective until all
22 judicial review of the order or decision is final.

23 (g) If a person charged is financially unable to either
24 forward the amount of the penalty for placement in an escrow
25 account or post a supersedeas bond for the amount of the penalty,
26 the person may satisfy the requirements of Subsection (f)(2) of
27 this section by filing with the board an affidavit sworn by the

1 person charged, stating that the person is financially unable to
2 either forward the amount of the penalty or post a bond.

3 (h) If the person charged fails to pay the penalty in full
4 as provided under Subsection (f)(1) of this section or forward the
5 money, post the bond, or file the affidavit as provided by
6 Subsection (f) or (g) of this section, the board may forward the
7 matter to the attorney general for enforcement.

8 (i) Judicial review of the order or decision of the board
9 assessing the penalty shall be under the substantial evidence rule
10 and shall be instituted by filing a petition with a district court
11 in Travis County, as provided by Subchapter G, Chapter 2001,
12 Government Code.

13 (j) If the penalty is reduced or not assessed by the court,
14 the board shall remit to the person charged the appropriate amount
15 plus accrued interest if the penalty has been paid or shall execute
16 a release of the bond if a supersedeas bond has been posted. The
17 accrued interest on amounts remitted by the board under this
18 subsection shall be paid at a rate equal to the rate charged on
19 loans to depository institutions by the New York Federal Reserve
20 Bank and shall be paid for the period beginning on the date the
21 penalty is paid to the board under Subsection (f) of this section
22 and ending on the date the penalty is remitted.

23 (k) An administrative penalty collected under Subsection (b)
24 of this section shall be deposited in the general revenue fund.

25 (l) A person commits an offense if the person violates this
26 article or any regulatory statute administered by the board or any
27 rule adopted under this article or any rule adopted under any

1 regulatory statute administered by the board, engages in activities
2 for which a license, endorsement, certification, or registration is
3 required without a license, endorsement, certification, or
4 registration issued under this article, or employs or utilizes an
5 unlicensed, unendorsed, uncertified, or unregistered person to
6 engage in activities for which a license, endorsement,
7 certification, or registration is required by this article. An
8 offense under this subsection is a Class C misdemeanor.

9 (m) A field representative of the board or, within the
10 jurisdiction of that municipality or water district, a municipal
11 inspector or water district inspector or other inspector authorized
12 to inspect work regulated by the board, may issue citations to
13 persons who engage in conduct described by Subsection (l) of this
14 section.

15 (n) Citations issued under Subsection (l) and Subsection (m)
16 of this section may be filed in a county justice court or municipal
17 court for adjudication of the offense or offenses.

18 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
19 adopt rules for a law or program regulated by the board as
20 necessary to comply with any federal regulation that imposes
21 standards or requirements on that law or program.

22 SECTION 2. The Plumbing License Law (Article 6243-101,
23 Vernon's Texas Civil Statutes) is amended by adding Section 1A to
24 read as follows:

25 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
26 Act is administered by the Texas State Board of Mechanical
27 Industries in accordance with Article 9150, Revised Statutes. To

1 the extent of a conflict between this Act and Article 9150, Revised
2 Statutes, that article prevails.

3 (b) Any reference in this Act to the Texas State Board of
4 Plumbing Examiners means the Texas State Board of Mechanical
5 Industries.

6 (c) The Texas State Board of Plumbing Examiners is abolished
7 and the functions of that board are exercised by the Texas State
8 Board of Mechanical Industries.

9 SECTION 3. The Air Conditioning and Refrigeration Contractor
10 License Law (Article 8861, Vernon's Texas Civil Statutes) is
11 amended by adding Section 1A to read as follows:

12 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

13 (a) This Act is administered by the Texas State Board of
14 Mechanical Industries in accordance with Article 9150, Revised
15 Statutes. To the extent of a conflict between this Act and Article
16 9150, Revised Statutes, that article prevails.

17 (b) Any reference in this Act to the Texas Department of
18 Licensing and Regulation, the commissioner of licensing and
19 regulation, or the Air Conditioning and Refrigeration Contractors
20 Advisory Board means the Texas State Board of Mechanical
21 Industries.

22 (c) The Air Conditioning and Refrigeration Contractors
23 Advisory Board is abolished and the functions of that board and the
24 functions, under this Act, of the Texas Department of Licensing and
25 Regulation and the commissioner of licensing and regulation are
26 exercised by the Texas State Board of Mechanical Industries.

27 SECTION 4. Section 341.033(f), Health and Safety Code, is

1 amended to read as follows:

2 (f) A public drinking water supply may not be connected to a
3 sprinkling, condensing, cooling, plumbing, or other system unless
4 the connection is designed to ensure against a backflow or
5 siphonage of sewage or contaminated water into the drinking water
6 supply. Notwithstanding any other provision of this chapter, this
7 subsection is administered by the Texas State Board of Mechanical
8 Industries in accordance with Article 9150, Revised Statutes. To
9 the extent of a conflict between this chapter and Article 9150,
10 Revised Statutes, regarding the administration of this subsection,
11 Article 9150 prevails. Any reference in this chapter to the Texas
12 Natural Resource Conservation Commission, as it applies to this
13 subsection, means the Texas State Board of Mechanical Industries.

14 SECTION 5. Chapter 372, Health and Safety Code, is amended
15 by adding Section 372.0015 to read as follows:

16 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
17 administered by the Texas State Board of Mechanical Industries in
18 accordance with Article 9150, Revised Statutes. To the extent of a
19 conflict between this chapter and Article 9150, Revised Statutes,
20 that article prevails.

21 (b) Any reference in this chapter to the Texas Natural
22 Resource Conservation Commission means the Texas State Board of
23 Mechanical Industries.

24 SECTION 6. Chapter 34, Water Code, is amended by adding
25 Section 34.0015 to read as follows:

26 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.
27 (a) This chapter is administered by the Texas State Board of

1 Mechanical Industries in accordance with Article 9150, Revised
2 Statutes. To the extent of a conflict between this chapter and
3 Article 9150, Revised Statutes, that article prevails.

4 (b) Any reference in this chapter to the Texas Natural
5 Resource Conservation Commission or the Texas irrigators advisory
6 council means the Texas State Board of Mechanical Industries.

7 (c) The Texas irrigators advisory council is abolished and
8 the functions of that board and the functions, under this chapter,
9 of the Texas Natural Resource Conservation Commission are exercised
10 by the Texas State Board of Mechanical Industries.

11 SECTION 7. (a) As soon as possible after the effective date
12 of this Act, the governor shall appoint the initial members of the
13 Texas State Board of Mechanical Industries in accordance with
14 Article 9150, Revised Statutes, as added by this Act.

15 (b) A person who is serving on the day immediately before
16 the effective date of this Act as a member of the governing body of
17 an agency abolished by this Act is eligible for appointment to the
18 Texas State Board of Mechanical Industries if the person meets the
19 requirements set forth in Section 2, Article 9150, Revised
20 Statutes, as added by this Act.

21 (c) In making the initial appointments, the governor shall
22 designate members to serve terms as follows:

23 (1) one master plumber member, one licensed backflow
24 prevention specialist member, one plumbing inspector member, one
25 licensed irrigation installer member, and one public member serve
26 for terms expiring February 1, 2001;

27 (2) one journeyman plumber member, one air

1 conditioning and refrigeration contractor member, one engineer
2 member, one air conditioning and refrigeration license A member,
3 and one public member serve for terms expiring February 1, 2003;
4 and

5 (3) one plumbing contractor member, one air
6 conditioning and refrigeration license B member, one licensed
7 irrigation contractor, and two public members serve for terms
8 expiring February 1, 2005.

9 (d) The Texas State Board of Mechanical Industries may not
10 take any action and is not created until the day after the date the
11 last appointee to the initial board takes office. On the date of
12 its creation, the board assumes its functions and:

13 (1) the Air Conditioning and Refrigeration Contractors
14 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
15 irrigators advisory council are abolished;

16 (2) the obligations, rights, contracts, records and
17 other property, and personnel of, and unspent money appropriated to
18 or for, the abolished boards and council or the governing body for
19 the laws or programs transferred to the new board under this Act
20 are transferred to the Texas State Board of Mechanical Industries;

21 (3) the rules of the abolished boards and council or
22 the governing body for the laws or programs transferred to the new
23 board under this Act are continued in effect as rules of the Texas
24 State Board of Mechanical Industries until superseded by rule of
25 the new board;

26 (4) the licenses, certificates, permits, or
27 registrations in effect that were issued by the abolished boards or

1 council or the governing body for the laws or programs transferred
2 to the new board under this Act are continued in effect as
3 licenses, certificates, permits, or registrations of the Texas
4 State Board of Mechanical Industries;

5 (5) a complaint or investigation pending before the
6 abolished boards or council or the governing body for the laws or
7 programs transferred to the new board under this Act is transferred
8 without change in status to the Texas State Board of Mechanical
9 Industries;

10 (6) a contested case pending before the abolished
11 boards and council or the governing body for the laws or programs
12 transferred to the new board under this Act is transferred to the
13 Texas State Board of Mechanical Industries and actions taken in the
14 proceeding are treated as if taken by the Texas State Board of
15 Mechanical Industries; and

16 (7) any reference in a law to the abolished boards or
17 council means the Texas State Board of Mechanical Industries.

18 (e) Regardless of the changes in law made by this Act, until
19 the date that the Air Conditioning and Refrigeration Contractors
20 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
21 irrigators advisory council are abolished as provided by this
22 section, the boards and council continue in existence and shall
23 administer their functions under the law that governed the boards
24 and council before the effective date of this Act, and the prior
25 law is continued in effect for that purpose.

26 (f) The Texas State Board of Mechanical Industries shall
27 adopt rules under this Act not later than December 1, 1999.

1 SECTION 8. The following laws are repealed:

2 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
3 Law (Article 6243-101, Vernon's Texas Civil Statutes);

4 (2) Section 3A, Air Conditioning and Refrigeration
5 Contractor License Law (Article 8861, Vernon's Texas Civil
6 Statutes); and

7 (3) Section 34.003, Water Code.

8 SECTION 9. This Act takes effect September 1, 1999.

9 SECTION 10. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2155** by Yarbrough (relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.
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The bill would create the "Texas State Board of Mechanical Industries", and would shift regulatory responsibilities for several programs to the new agency. All functions of the Texas State Board of Plumbing Examiners (TSBPE) would be transferred to the new agency, and the TSBPE would be abolished. Regulatory responsibilities for air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Two advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board and the Texas Irrigators Advisory Council. New advisory committees would be created on each of the following: plumbing; irrigation; air conditioning and refrigeration; and backflow prevention.

It is assumed that resources could be transferred between affected agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2155 by Yarbrough (Relating to the creation and operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would re-create the Texas State Board of Plumbing Examiners as the "Texas Board of Plumbing and Mechanical Work", and would shift regulatory responsibilities for several programs to the new agency. Regulatory responsibilities for boilers and air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Several advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board, the Board of Boiler Rules, and the Texas Irrigators Advisory Council.

It is assumed that resources could be shifted between agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 456 Board of Plumbing Examiners, 344 Commission on Human Rights, 582 Natural Resource Conservation Commission

LBB Staff: JK, TH, CB

By: Yarbrough (Senate Sponsor - Harris) H.B. No. 2155
(In the Senate - Received from the House May 10, 1999;
May 10, 1999, read first time and referred to Committee on State
Affairs; May 12, 1999, rereferred to Committee on Administration;
May 14, 1999, reported favorably by the following vote: Yeas 3,
Nays 0; May 14, 1999, sent to printer.)

A BILL TO BE ENTITLED
AN ACT

relating to the creation and operation of the Texas State Board of
Mechanical Industries and the regulation of plumbing and mechanical
laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title
132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the
Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical
Industries consists of 15 members as follows:

(1) one member who has at least 10 years of practical
experience as a master plumber;

(2) one member who has at least five years of
practical experience as a journeyman plumber;

(3) one member who has at least five years of
experience as a plumbing contractor;

(4) one member who has at least five years of
practical experience as a plumbing inspector;

(5) one member who is a licensed air conditioning and
refrigeration contractor;

(6) one member who has held an air conditioning and
refrigeration license A for at least five years;

(7) one member who has held an air conditioning and
refrigeration license B for at least five years;

(8) one member who is a licensed irrigation installer
for at least 10 years;

(9) one member who is a licensed irrigation contractor
for at least five years;

(10) one member who is a licensed backflow prevention
specialist;

(11) one member who is a licensed engineer who has
professional engineering experience in plumbing design or
mechanical design; and

(12) four members who are representatives of the
public.

(b) Members of the board are appointed by the governor with
the advice and consent of the senate.

(c) Appointments to the board shall be made without regard
to the race, color, disability, sex, religion, age, or national
origin of the appointees.

Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
shall designate a member of the board as the presiding officer of
the board to serve in that capacity at the will of the governor.
The board annually shall select an assistant presiding officer and
a secretary-treasurer.

(b) The board shall hold at least two regular meetings each
year. The board may not hold more than four meetings each year
unless at least nine members of the board request the presiding
officer in writing to call additional meetings.

(c) A member of the board is entitled to a per diem as set
by the General Appropriations Act for each day the member engages
in the business of the board. A member may not receive
compensation for travel expenses, including expenses for meals and
lodging, other than transportation expenses as provided by the

General Appropriations Act.

Sec. 4. TERMS. (a) Members of the board are appointed for staggered six-year terms, with five members' terms expiring on February 1 of each odd-numbered year.

(b) A member appointed to fill a vacancy shall hold office for the remainder of that term.

Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be a public member of the board if the person or the person's spouse:

(1) is registered, certified, or licensed by a regulatory agency in the field of plumbing or mechanical work;

(2) is employed by or participates in the management of a business entity or other organization regulated by or receiving money from the board;

(3) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by or receiving money from the board; or

(4) uses or receives a substantial amount of tangible goods, services, or money from the board other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this section, "Texas trade association" means a cooperative and voluntarily joined association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

(1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of plumbing or mechanical work; or

(2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of plumbing or mechanical work.

(c) A person may not be a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground for removal from the board that a member:

(1) does not have at the time of taking office the qualifications required by Section 2 of this article;

(2) does not maintain during service on the board the qualifications required by Section 2 of this article;

(3) is ineligible for membership under Section 5, 6, or 7 of this article;

(4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or

(5) is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year without an excuse approved by a majority vote of the board.

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the

3-1 presiding officer of the board of the potential ground. The
 3-2 presiding officer shall then notify the governor and the attorney
 3-3 general that a potential ground for removal exists. If the
 3-4 potential ground for removal involves the presiding officer, the
 3-5 executive director shall notify the next highest ranking officer of
 3-6 the board, who shall then notify the governor and the attorney
 3-7 general that a potential ground for removal exists.

3-8 Sec. 9. STAFF. (a) The board shall employ an executive
 3-9 director and administrative and clerical employees as necessary to
 3-10 carry out the board's functions.

3-11 (b) The board shall develop and implement policies that
 3-12 clearly separate the policymaking responsibilities of the board and
 3-13 the management responsibilities of the executive director and staff
 3-14 of the board.

3-15 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
 3-16 administer and enforce:

3-17 (1) The Plumbing License Law (Article 6243-101,
 3-18 Vernon's Texas Civil Statutes);

3-19 (2) the law regulating environmental performance
 3-20 standards for plumbing fixtures, Chapter 372, Health and Safety
 3-21 Code;

3-22 (3) the Air Conditioning and Refrigeration Contractor
 3-23 License Law (Article 8861, Vernon's Texas Civil Statutes);

3-24 (4) the law regulating irrigators, Chapter 34, Water
 3-25 Code; and

3-26 (5) the law regulating certain connections to public
 3-27 drinking water, Section 341.033(f), Health and Safety Code.

3-28 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
 3-29 a separate advisory committee on each of the following:

3-30 (1) plumbing;

3-31 (2) irrigation;

3-32 (3) air conditioning and refrigeration; and

3-33 (4) backflow prevention.

3-34 (b) The board may appoint additional advisory committees as
 3-35 determined to be necessary by a majority of the board.

3-36 (c) A member of an advisory committee appointed under this
 3-37 section serves a two-year term. An advisory committee member is
 3-38 not entitled to compensation but is entitled to reimbursement for
 3-39 actual and necessary expenses, including travel expenses, incurred
 3-40 in performing duties as a member of the advisory committee.

3-41 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
 3-42 separate licenses, certificates, permits, or registrations for the
 3-43 programs under Section 10 of this article in which a license,
 3-44 certificate, permit, or registration is issued by the board.

3-45 (b) The board may issue more than one type of license,
 3-46 certificate, permit, or registration to a person under a law
 3-47 regulated by the board if the person is qualified to hold each of
 3-48 the licenses, certificates, permits, or registrations issued. The
 3-49 board shall adopt rules relating to the issuance of multiple
 3-50 licenses, certificates, permits, or registrations to a person under
 3-51 laws administered by the board.

3-52 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
 3-53 from funds appropriated to it, all necessary disbursements to carry
 3-54 out this article and the laws and programs listed in Section 10 of
 3-55 this article.

3-56 (b) The financial transactions of the board are subject to
 3-57 audit by the state auditor in accordance with Chapter 321,
 3-58 Government Code.

3-59 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
 3-60 annually with the governor and the presiding officer of each house
 3-61 of the legislature a complete and detailed written report
 3-62 accounting for all funds received and disbursed by the board during
 3-63 the preceding fiscal year. The annual report must be in the form
 3-64 and reported in the time provided by the General Appropriations
 3-65 Act.

3-66 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
 3-67 the executive director's designee shall develop an intra-agency
 3-68 career ladder program. The program shall require intra-agency
 3-69 posting of all nonentry level positions concurrently with any

public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The executive director or the executive director's designee shall prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, training, and promotion of personnel, that show the intent of the board to avoid the unlawful employment practices described by Chapter 21, Labor Code; and

(2) an analysis of the extent to which the composition of the board's personnel is in accordance with state and federal law and a description of reasonable methods to achieve compliance with state and federal law.

(c) The policy statement must:

(1) be updated annually;

(2) be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1); and

(3) be filed with the governor's office.

Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board and the license number of the responsible licensee for the purpose of directing complaints to the board. The board or the responsible licensee, as appropriate, shall provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated by the board;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated by the board; and

(3) in a bill for service provided by an individual or entity regulated by the board; and

(4) the company name and license number of the responsible licensee shall be displayed on both sides of all vehicles used in conjunction with contracting or performing work regulated by the board.

(c) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT INFORMATION. (a) A person who is appointed to and qualifies for office as a member of the board may not vote, deliberate, or be counted as a member in attendance at a meeting of the board until the person completes a training program that complies with this section.

(b) The training program must provide the person with information regarding:

(1) this article and the statutes enforced by the

board;

- (2) the programs operated by the board;
- (3) the role and functions of the board;
- (4) the rules of the board with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) the current budget for the board;
- (6) the results of the most recent formal audit of the

board;

- (7) the requirements of:
 - (A) the open meetings law, Chapter 551, Government Code;
 - (B) the public information law, Chapter 552, Government Code;
 - (C) the administrative procedure law, Chapter 2001, Government Code; and
 - (D) other laws relating to public officials, including conflict-of-interest laws; and
- (8) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(c) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

(d) The executive director or the executive director's designee shall provide to members of the board and to board employees, as often as necessary, information regarding the requirements for office or employment under this article, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 21. SUNSET PROVISION. The Texas State Board of Mechanical Industries is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this article expires September 1, 2011.

Sec. 22. PENALTIES. (a) The board shall revoke or suspend a license, endorsement, certification, or registration, probate a license, endorsement, certification, or registration suspension, or reprimand any person or entity regulated by the board for any violation of this article or any regulatory statute administered by the board or any rule adopted under this article or any rule adopted under any regulatory statute administered by the board. A violation of this article shall include but not be limited to: obtaining a license through error or fraud; having recklessly, wilfully, negligently, or arbitrarily violated municipal or other political subdivision rules or ordinances regulating any work governed by the board; making a substantial misrepresentation of services to be provided or which have been provided; making any false promise with intent to influence, persuade, or induce an individual to contract for services. Grounds for suspension or revocation of a license, endorsement, certification, or registration due to suspected incompetence or wilful violation by a licensee may be determined through retesting procedures.

(b) The board may assess an administrative penalty against a person or entity who violates a provision of this article, a law administered by the board, or a rule or order adopted by the board as provided by this section.

(c) The penalty for each violation may be in an amount not to exceed \$1,000. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment. In determining the amount of the penalty, the board shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the prohibited acts and the hazard or potential hazard posed to the health or safety of the public;

- (2) the economic damage to property or the environment caused by the violation;

- (3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) If the board proposes to assess an administrative penalty, refuse a person's application for licensure, endorsement, certification, or registration, or suspend or revoke a person's license, endorsement, certification, or registration, the person is entitled to a hearing, if requested, governed by the Administrative Procedure Act, Chapter 2001, Government Code.

(e) The executive director or the executive director's staff designee or staff designees shall oversee and conduct investigations, conduct informal conferences, negotiate agreed final orders, draft formal complaints, recommend administrative penalties, and pursue cases involving violations of this article or any regulatory statute administered by the board or any rule adopted under this article or any rule adopted under any regulatory statute administered by the board at the State Office of Administrative Hearings. Proceedings for assessing administrative penalties or for the refusal, suspension, or revocation of a license, endorsement, certification, or registration are subject to the Administrative Procedure Act, Chapter 2001, Government Code.

(f) Within the 30-day period immediately following the day on which a board order assessing an administrative penalty to a person or entity becomes final as provided by Section 2001.144, Government Code, the person or entity charged with the penalty shall:

(1) pay the penalty in full; or

(2) if the person files a petition for judicial review contesting either the fact of the violation or the amount of the penalty or contesting both the fact of the violation and the amount of the penalty:

(A) forward the amount to the board for placement in an escrow account; or

(B) in lieu of payment into escrow, post with the board a supersedeas bond in a form approved by the board for the amount of the penalty, the bond to be effective until all judicial review of the order or decision is final.

(g) If a person charged is financially unable to either forward the amount of the penalty for placement in an escrow account or post a supersedeas bond for the amount of the penalty, the person may satisfy the requirements of Subsection (f)(2) of this section by filing with the board an affidavit sworn by the person charged, stating that the person is financially unable to either forward the amount of the penalty or post a bond.

(h) If the person charged fails to pay the penalty in full as provided under Subsection (f)(1) of this section or forward the money, post the bond, or file the affidavit as provided by Subsection (f) or (g) of this section, the board may forward the matter to the attorney general for enforcement.

(i) Judicial review of the order or decision of the board assessing the penalty shall be under the substantial evidence rule and shall be instituted by filing a petition with a district court in Travis County, as provided by Subchapter G, Chapter 2001, Government Code.

(j) If the penalty is reduced or not assessed by the court, the board shall remit to the person charged the appropriate amount plus accrued interest if the penalty has been paid or shall execute a release of the bond if a supersedeas bond has been posted. The accrued interest on amounts remitted by the board under this subsection shall be paid at a rate equal to the rate charged on loans to depository institutions by the New York Federal Reserve Bank and shall be paid for the period beginning on the date the penalty is paid to the board under Subsection (f) of this section and ending on the date the penalty is remitted.

(k) An administrative penalty collected under Subsection (b) of this section shall be deposited in the general revenue fund.

(l) A person commits an offense if the person violates this article or any regulatory statute administered by the board or any rule adopted under this article or any rule adopted under any

regulatory statute administered by the board, engages in activities for which a license, endorsement, certification, or registration is required without a license, endorsement, certification, or registration issued under this article, or employs or utilizes an unlicensed, unendorsed, uncertified, or unregistered person to engage in activities for which a license, endorsement, certification, or registration is required by this article. An offense under this subsection is a Class C misdemeanor.

(m) A field representative of the board or, within the jurisdiction of that municipality or water district, a municipal inspector or water district inspector or other inspector authorized to inspect work regulated by the board, may issue citations to persons who engage in conduct described by Subsection (l) of this section.

(n) Citations issued under Subsection (l) and Subsection (m) of this section may be filed in a county justice court or municipal court for adjudication of the offense or offenses.

Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall adopt rules for a law or program regulated by the board as necessary to comply with any federal regulation that imposes standards or requirements on that law or program.

SECTION 2. The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes) is amended by adding Section 1A to read as follows:

Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This Act is administered by the Texas State Board of Mechanical Industries in accordance with Article 9150, Revised Statutes. To the extent of a conflict between this Act and Article 9150, Revised Statutes, that article prevails.

(b) Any reference in this Act to the Texas State Board of Plumbing Examiners means the Texas State Board of Mechanical Industries.

(c) The Texas State Board of Plumbing Examiners is abolished and the functions of that board are exercised by the Texas State Board of Mechanical Industries.

SECTION 3. The Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes) is amended by adding Section 1A to read as follows:

Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED. (a) This Act is administered by the Texas State Board of Mechanical Industries in accordance with Article 9150, Revised Statutes. To the extent of a conflict between this Act and Article 9150, Revised Statutes, that article prevails.

(b) Any reference in this Act to the Texas Department of Licensing and Regulation, the commissioner of licensing and regulation, or the Air Conditioning and Refrigeration Contractors Advisory Board means the Texas State Board of Mechanical Industries.

(c) The Air Conditioning and Refrigeration Contractors Advisory Board is abolished and the functions of that board and the functions, under this Act, of the Texas Department of Licensing and Regulation and the commissioner of licensing and regulation are exercised by the Texas State Board of Mechanical Industries.

SECTION 4. Section 341.033(f), Health and Safety Code, is amended to read as follows:

(f) A public drinking water supply may not be connected to a sprinkling, condensing, cooling, plumbing, or other system unless the connection is designed to ensure against a backflow or siphonage of sewage or contaminated water into the drinking water supply. Notwithstanding any other provision of this chapter, this subsection is administered by the Texas State Board of Mechanical Industries in accordance with Article 9150, Revised Statutes. To the extent of a conflict between this chapter and Article 9150, Revised Statutes, regarding the administration of this subsection, Article 9150 prevails. Any reference in this chapter to the Texas Natural Resource Conservation Commission, as it applies to this subsection, means the Texas State Board of Mechanical Industries.

SECTION 5. Chapter 372, Health and Safety Code, is amended by adding Section 372.0015 to read as follows:

8-1 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
 8-2 administered by the Texas State Board of Mechanical Industries in
 8-3 accordance with Article 9150, Revised Statutes. To the extent of a
 8-4 conflict between this chapter and Article 9150, Revised Statutes,
 8-5 that article prevails.

8-6 (b) Any reference in this chapter to the Texas Natural
 8-7 Resource Conservation Commission means the Texas State Board of
 8-8 Mechanical Industries.

8-9 SECTION 6. Chapter 34, Water Code, is amended by adding
 8-10 Section 34.0015 to read as follows:

8-11 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.
 8-12 (a) This chapter is administered by the Texas State Board of
 8-13 Mechanical Industries in accordance with Article 9150, Revised
 8-14 Statutes. To the extent of a conflict between this chapter and
 8-15 Article 9150, Revised Statutes, that article prevails.

8-16 (b) Any reference in this chapter to the Texas Natural
 8-17 Resource Conservation Commission or the Texas irrigators advisory
 8-18 council means the Texas State Board of Mechanical Industries.

8-19 (c) The Texas irrigators advisory council is abolished and
 8-20 the functions of that board and the functions, under this chapter,
 8-21 of the Texas Natural Resource Conservation Commission are exercised
 8-22 by the Texas State Board of Mechanical Industries.

8-23 SECTION 7. (a) As soon as possible after the effective date
 8-24 of this Act, the governor shall appoint the initial members of the
 8-25 Texas State Board of Mechanical Industries in accordance with
 8-26 Article 9150, Revised Statutes, as added by this Act.

8-27 (b) A person who is serving on the day immediately before
 8-28 the effective date of this Act as a member of the governing body of
 8-29 an agency abolished by this Act is eligible for appointment to the
 8-30 Texas State Board of Mechanical Industries if the person meets the
 8-31 requirements set forth in Section 2, Article 9150, Revised
 8-32 Statutes, as added by this Act.

8-33 (c) In making the initial appointments, the governor shall
 8-34 designate members to serve terms as follows:

8-35 (1) one master plumber member, one licensed backflow
 8-36 prevention specialist member, one plumbing inspector member, one
 8-37 licensed irrigation installer member, and one public member serve
 8-38 for terms expiring February 1, 2001;

8-39 (2) one journeyman plumber member, one air
 8-40 conditioning and refrigeration contractor member, one engineer
 8-41 member, one air conditioning and refrigeration license A member,
 8-42 and one public member serve for terms expiring February 1, 2003;
 8-43 and

8-44 (3) one plumbing contractor member, one air
 8-45 conditioning and refrigeration license B member, one licensed
 8-46 irrigation contractor, and two public members serve for terms
 8-47 expiring February 1, 2005.

8-48 (d) The Texas State Board of Mechanical Industries may not
 8-49 take any action and is not created until the day after the date the
 8-50 last appointee to the initial board takes office. On the date of
 8-51 its creation, the board assumes its functions and:

8-52 (1) the Air Conditioning and Refrigeration Contractors
 8-53 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
 8-54 irrigators advisory council are abolished;

8-55 (2) the obligations, rights, contracts, records and
 8-56 other property, and personnel of, and unspent money appropriated to
 8-57 or for, the abolished boards and council or the governing body for
 8-58 the laws or programs transferred to the new board under this Act
 8-59 are transferred to the Texas State Board of Mechanical Industries;

8-60 (3) the rules of the abolished boards and council or
 8-61 the governing body for the laws or programs transferred to the new
 8-62 board under this Act are continued in effect as rules of the Texas
 8-63 State Board of Mechanical Industries until superseded by rule of
 8-64 the new board;

8-65 (4) the licenses, certificates, permits, or
 8-66 registrations in effect that were issued by the abolished boards or
 8-67 council or the governing body for the laws or programs transferred
 8-68 to the new board under this Act are continued in effect as
 8-69 licenses, certificates, permits, or registrations of the Texas

State Board of Mechanical Industries;

(5) a complaint or investigation pending before the abolished boards or council or the governing body for the laws or programs transferred to the new board under this Act is transferred without change in status to the Texas State Board of Mechanical Industries;

(6) a contested case pending before the abolished boards and council or the governing body for the laws or programs transferred to the new board under this Act is transferred to the Texas State Board of Mechanical Industries and actions taken in the proceeding are treated as if taken by the Texas State Board of Mechanical Industries; and

(7) any reference in a law to the abolished boards or council means the Texas State Board of Mechanical Industries.

(e) Regardless of the changes in law made by this Act, until the date that the Air Conditioning and Refrigeration Contractors Advisory Board, Texas State Board of Plumbing Examiners, and Texas irrigators advisory council are abolished as provided by this section, the boards and council continue in existence and shall administer their functions under the law that governed the boards and council before the effective date of this Act, and the prior law is continued in effect for that purpose.

(f) The Texas State Board of Mechanical Industries shall adopt rules under this Act not later than December 1, 1999.

SECTION 8. The following laws are repealed:

(1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License Law (Article 6243-101, Vernon's Texas Civil Statutes);

(2) Section 3A, Air Conditioning and Refrigeration Contractor License Law (Article 8861, Vernon's Texas Civil Statutes); and

(3) Section 34.003, Water Code.

SECTION 9. This Act takes effect September 1, 1999.

SECTION 10. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

* * * * *

**FAVORABLE
SENATE COMMITTEE REPORT ON**

SB SCR SJR SR HB HCR HJR 2155
By Vanbrough / HARRIS
(Author/Senate Sponsor)
5-14-99
(date)

Sir:

We, your Committee on ADMINISTRATION, to which was referred the attached measure, have on 5-14-99, had the same under consideration and I am instructed to report it back with the recommendation (s) that it:

- ☒ do pass and be printed
☐ do pass and be ordered not printed
☐ and is recommended for placement on the Local and Uncontested Bills Calendar.

A fiscal note was requested. ☒ yes ☐ no

A revised fiscal note was requested. ☐ yes ☒ no

An actuarial analysis was requested. ☐ yes ☒ no

Considered by subcommittee. ☐ yes ☒ no

The measure was reported from Committee by the following vote:

	YEA	NAY	ABSENT	PNV
Senator Harris, Chairman	<input checked="" type="checkbox"/>			
Senator Madla, Vice-Chairman	<input checked="" type="checkbox"/>			
Senator Ellis	<input checked="" type="checkbox"/>			
Senator Shapiro			<input checked="" type="checkbox"/>	
Senator Whitmire			<input checked="" type="checkbox"/>	
TOTAL VOTES	<u>3</u>		<u>2</u>	

COMMITTEE ACTION

S260 Considered in public hearing
S270 Testimony taken
Maggie J. Schmitt
COMMITTEE CLERK

Chin Harris
CHAIRMAN

WITNESS LIST

HB 2155
SENATE COMMITTEE REPORT
Administration Committee

May 14, 1999 - 1:30P

Against: Raab, Ted Melina (Texas AFL-CIO & State Employees), Austin

Registering, but not testifying:

For: Briers, Stanley J. (Plumbing Air Cond. & MEch. Contractors),
Taylor Lake Vil

Janecka, Ron (Associated Plumbing-Heating-Cooling
Contractors), Austin

BILL ANALYSIS

Senate Research Center

H.B. 2155
By: Yarbrough (Harris)
State Affairs
5/12/1999
Engrossed

DIGEST

Currently, a contractor who wishes to perform plumbing, air conditioning, refrigeration, and backflow prevention services is required to obtain several specific licenses from several different agencies. H.B. 2155 creates the Texas State Board of Mechanical Industries to consolidate certain agencies to make a more effective and efficient system of licensing and inspection.

PURPOSE

As proposed, H.B. 2155 creates the Texas State Board of Mechanical Industries to consolidate certain agencies to make a more effective and efficient system of licensing and inspection.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas State Board of Mechanical Industries in SECTION 1 (Sections 12(b), 17(b), 22(e), and 23, Title 132B, Article 9150, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends V.T.C.S. by adding Title 132B, as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

ART. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. Defines "board."

Sec. 2. BOARD. Sets forth the 15 members of the Texas State Board of Mechanical Industries (board). Provides that the governor appoints board members with the senate's advice and consent. Sets forth standard language developed by the Sunset Advisory Commission.

Sec. 3. OFFICERS; MEETINGS; COMPENSATION. Requires the governor to designate a presiding officer to serve at the governor's will. Requires the board to annually select an assistant presiding officer and a secretary-treasurer. Sets forth required provisions for board meetings and board member compensation.

Sec. 4. TERMS. Sets forth the staggered six-year terms of board members. Requires a member appointed to fill a vacancy to hold office for the remainder of the term.

Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. Prohibits a person from being a public board member under certain conditions.

Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. Defines "Texas trade association" and adds standard language developed by the Sunset Advisory Commission.

Sec. 7. EFFECT OF LOBBYING ACTIVITY. Prohibits a person from serving as a board member if that person is required to register as a lobbyist, or for certain compensation that the person receives.

Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. Sets forth grounds for removal of a board member. Provides that validity of board actions is not affected by the existence of a ground

for removal of a board member. Sets forth provisions for the executive director in the case of suspected grounds for removal of a board member, including the presiding officer.

Sec. 9. STAFF. Requires the board to employ an executive director and administrative and clerical employees as necessary to carry out board functions. Requires the board to develop and implement certain policies which separate certain responsibilities.

Sec. 10. REGULATORY STATUTES ADMINISTERED. Sets forth laws which the board is required to administer and enforce.

Sec. 11. ADVISORY COMMITTEES. Sets forth matters for which the board is required to appoint a separate advisory committee. Authorizes the board to appoint additional committees as necessary. Provides that an advisory committee member serves a two-year term. Sets forth entitlement prohibitions and reimbursement authorizations for an advisory committee member.

Sec. 12. SEPARATE LICENSES. Requires the board to issue separate licenses, certificates, permits, and registrations for certain programs. Authorizes the board to issue more than one type of documentation to a person who is qualified. Requires the board to adopt rules relating to the issuance of multiple licenses, certificates, permits, or registrations.

Sec. 13. EXPENDITURES; AUDIT. Authorizes the board to authorize necessary disbursements to carry out this article and certain laws. Subjects the board's financial transactions to audit by the state auditor.

Sec. 14. ANNUAL FINANCIAL REPORT. Requires the board to file a complete and detailed written report accounting for funds during the preceding fiscal year, to certain entities. Requires the annual report to be in the form and reported in the time provided by the General Appropriations Act.

Sec. 15. PERSONNEL POLICIES. Requires the development of an intra-agency career ladder program. Sets forth program requirements. Requires the development of a system of annual performance evaluations based on measurable job tasks. Requires all merit pay for board employees to be based on this system.

Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. Sets forth standard language developed by the Sunset Advisory Commission.

Sec. 17. PUBLIC INTEREST INFORMATION. Requires the board to prepare and make available, information describing its functions and complaint procedures. Requires the board to establish methods to notify certain entities of necessary information to direct complaints to the board. Sets forth provisions for the board or responsible licensee to provide certain notification. Requires the board to list a toll-free complaint number under certain conditions.

Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. Requires the board to develop and implement policies which provide the public with reasonable opportunities to speak on any issue under board jurisdiction.

Sec. 19. PROGRAM ACCESSIBILITY. Requires the board to prepare and maintain a written plan which describes how a non-English-speaker can access board programs. Requires the board to comply with federal and state laws regarding program and facility accessibility.

Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT INFORMATION. Requires completion of a certain training program by a board member prior to taking certain actions, and sets forth training program requirements. Entitles a board member to travel expenses. Requires certain entities to provide information regarding requirements, responsibilities, and standards of conduct.

Sec. 21. SUNSET PROVISION. Provides that the board is subject to Chapter 325, Government Code. Provides that the board is abolished and this article expires September 1, 2011.

Sec. 22. PENALTIES. Requires the board to revoke or suspend certain documentation, or reprimand any regulated entity which violates certain statutes or this article. Creates violations of this article. Authorizes grounds for revocation to be determined through retesting procedures. Authorizes the board to assess a maximum \$1,000 administrative penalty against certain entities, and sets forth provisions for the violation. Entitles a person upon whom the board proposes to take certain actions, to a hearing. Requires certain entities to oversee and conduct matters involving violations. Subjects certain proceedings to the Administrative Procedure Act. Requires an entity charged with a penalty to complete certain action within a certain deadline. Sets forth provisions for a person who is financially unable to satisfy requirements of a penalty. Requires judicial review to be under the substantial evidence rule and requires the filing of a petition. Requires the board to take certain actions if the penalty is reduced or not assessed by the court. Requires a collected administrative penalty to be deposited in the general revenue fund. Creates a Class C misdemeanor offense for violating this article, certain statutes, and rules, and sets forth activities which are violations. Authorizes certain entities to issue citations to certain individuals participating in violation-related activities.

Sec. 23. EFFECT OF FEDERAL REGULATIONS. Requires the board to adopt rules that impose standards or requirements on regulated laws or programs.

SECTION 2. Amends Article 6243-101, V.T.C.S. (The Plumbing License Law), by adding Section 1A, as follows:

Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. Provides that this Act is administered by the board. Provides that Article 9150, V.T.C.S., prevails in the case of a conflict. Establishes that any reference to the Texas State Board of Plumbing Examiners means the board. Abolishes the State Board of Plumbing Examiners and transfers its functions to the board.

SECTION 3. Amends Article 8861, V.T.C.S. (The Air Conditioning and Refrigeration Contractor License Law), by adding Section 1A, as follows:

Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED. Provides that any reference to the Texas Department of Licensing and Regulation, the commissioner of licensing and regulation, or the Air Conditioning and Refrigeration Contractors Advisory Board, means the board. Makes conforming changes.

SECTION 4. Amends Section 341.033(f), Health and Safety Code, to provide that any reference to the Texas Natural Resource Conservation Commission means the board. Makes conforming changes.

SECTION 5. Amends Chapter 372, Health and Safety Code, by adding Section 372.0015, as follows:

Sec. 372.0015. FUNCTIONS TRANSFERRED. Makes conforming changes.

SECTION 6. Amends Chapter 34, Water Code, by adding Section 34.0015, as follows:

Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED. Provides that any reference to the Texas irrigators advisory council means the board. Makes conforming changes.

SECTION 7. Requires the governor to appoint the initial members of the board. Provides that if a person meets certain qualifications and is serving on an agency abolished by this Act immediately before the effective date, that person is eligible for appointment to the board. Sets forth requirements for the governor in the process of designating members for initial appointments. Prohibits the board from taking any action and existing before the initial board has unanimously taken office. Sets forth provisions for the board and certain agencies on the day of the board's creation. Requires certain agencies to exist until their abolishment. Requires the board to adopt rules by December 1, 1999.

SECTION 8. Repealers:

(1) Sections 4, 4a, 5A, 6, and 7, Article 6243-101, V.T.C.S. (State Board of Plumbing Examiners, Sunset Provision, Personnel Policies, and Compensation of Board).

(2) Section 3A, Article 8861, V.T.C.S. (Advisory Board).

(3) Section 34.003, Water Code (Irrigation Advisory Council).

SECTION 9. Effective date: September 1, 1999.

SECTION 10. Emergency clause.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

May 12, 1999

TO: Chris Harris, Chair, Senate, Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2155** by Yarbrough (relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would create the "Texas State Board of Mechanical Industries", and would shift regulatory responsibilities for several programs to the new agency. All functions of the Texas State Board of Plumbing Examiners (TSBPE) would be transferred to the new agency, and the TSBPE would be abolished. Regulatory responsibilities for air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Two advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board and the Texas Irrigators Advisory Council. New advisory committees would be created on each of the following: plumbing; irrigation; air conditioning and refrigeration; and backflow prevention.

It is assumed that resources could be transferred between affected agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, BB, SD, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

April 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2155 by Yarbrough (relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would create the "Texas State Board of Mechanical Industries", and would shift regulatory responsibilities for several programs to the new agency. All functions of the Texas State Board of Plumbing Examiners (TSBPE) would be transferred to the new agency, and the TSBPE would be abolished. Regulatory responsibilities for air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Two advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board and the Texas Irrigators Advisory Council. New advisory committees would be created on each of the following: plumbing; irrigation; air conditioning and refrigeration; and backflow prevention.

It is assumed that resources could be transferred between affected agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2155** by Yarbrough (Relating to the creation and operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would re-create the Texas State Board of Plumbing Examiners as the "Texas Board of Plumbing and Mechanical Work", and would shift regulatory responsibilities for several programs to the new agency. Regulatory responsibilities for boilers and air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Several advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board, the Board of Boiler Rules, and the Texas Irrigators Advisory Council.

It is assumed that resources could be shifted between agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.


Source Agencies: 452 Department of Licensing and Regulation, 456 Board of Plumbing Examiners, 344 Commission on Human Rights, 582 Natural Resource Conservation Commission

LBB Staff: JK, TH, CB

SENATE COMMITTEE ON ADMINISTRATION

BILL NO. HB 2155

Pursuant to Senate Rule 7.09(m), I hereby certify that the bill referenced above does not reduce the public's access to government information or the transaction of public business at this time.


Author of Bill

Date 5/12/99

Please return this statement to Senate Administration (E1.714) along with your Request for Hearing

ADOPTED

MAY 26 1999

Letty Long
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY

HARRIS

1 Amend C.S.H.B. 2155 by striking all below the enacting clause
2 and substituting the following:

3 SECTION 1. The Revised Statutes are amended by adding
4 Title 132B to read as follows:

5 TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

6 Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

7 Sec. 1. DEFINITION. In this article, "board" means the
8 Texas State Board of Mechanical Industries.

9 Sec. 2. BOARD. (a) The Texas State Board of Mechanical
10 Industries consists of nine members as follows:

11 (1) one member who has at least 10 years of practical
12 experience as a master plumber;

13 (2) one member who has at least 10 years of practical
14 experience as a journeyman plumber;

15 (3) one member who has at least five years of
16 experience as a plumbing contractor or as a licensed air
17 conditioning and refrigeration contractor;

18 (4) one member who has at least five years of
19 practical experience as a plumbing inspector;

20 (5) one member who has held an air conditioning and
21 refrigeration class A license or class B license for at least five
22 years;

23 (6) one member who has at least 10 years as a licensed
24 irrigation contractor; and

25 (7) three members who are representatives of the
26 public.

27 (b) Members of the board are appointed by the governor with
28 the advice and consent of the senate.

29 (c) Appointments to the board shall be made without regard

1 to the race, color, disability, sex, religion, age, or national
2 origin of the appointees.

3 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
4 shall designate a member of the board as the presiding officer of
5 the board to serve in that capacity at the will of the governor.
6 The board annually shall select an assistant presiding officer and
7 a secretary-treasurer.

8 (b) The board shall hold at least two regular meetings each
9 year. The board may not hold more than four meetings each year
10 unless at least nine members of the board request the presiding
11 officer in writing to call additional meetings.

12 (c) A member of the board is entitled to a per diem as set
13 by the General Appropriations Act for each day the member engages
14 in the business of the board. A member may not receive
15 compensation for travel expenses, including expenses for meals and
16 lodging, other than transportation expenses as provided by the
17 General Appropriations Act.

18 Sec. 4. TERMS. (a) Members of the board are appointed for
19 staggered six-year terms, with three members' terms expiring on
20 February 1 of each odd-numbered year.

21 (b) A member appointed to fill a vacancy shall hold office
22 for the remainder of that term.

23 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
24 a public member of the board if the person or the person's spouse:

25 (1) is registered, certified, or licensed by a
26 regulatory agency in the field of plumbing or mechanical work;

27 (2) is employed by or participates in the management
28 of a business entity or other organization regulated by or
29 receiving money from the board;

30 (3) owns or controls, directly or indirectly, more
31 than a 10 percent interest in a business entity or other

1 organization regulated by or receiving money from the board; or

2 (4) uses or receives a substantial amount of tangible
3 goods, services, or money from the board other than compensation or
4 reimbursement authorized by law for board membership, attendance,
5 or expenses.

6 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this
7 section, "Texas trade association" means a cooperative and
8 voluntarily joined association of business or professional
9 competitors in this state designed to assist its members and its
10 industry or profession in dealing with mutual business or
11 professional problems and in promoting their common interest.

12 (b) A person may not be a member of the board and may not be
13 a board employee employed in a "bona fide executive,
14 administrative, or professional capacity," as that phrase is used
15 for purposes of establishing an exemption to the overtime
16 provisions of the federal Fair Labor Standards Act of 1938 (29
17 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

18 (1) the person is an officer, employee, or paid
19 consultant of a Texas trade association in the field of plumbing or
20 mechanical work; or

21 (2) the person's spouse is an officer, manager, or
22 paid consultant of a Texas trade association in the field of
23 plumbing or mechanical work.

24 (c) A person may not be a member of the board or act as the
25 general counsel to the board if the person is required to register
26 as a lobbyist under Chapter 305, Government Code, because of the
27 person's activities for compensation on behalf of a profession
28 related to the operation of the board.

29 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
30 as a member of the board or act as the general counsel to the board
31 if the person is required to register as a lobbyist under Chapter

1 305, Government Code, because of the person's activities for
2 compensation on behalf of a profession related to the operation of
3 the board.

4 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
5 for removal from the board that a member:

6 (1) does not have at the time of taking office the
7 qualifications required by Section 2 of this article;

8 (2) does not maintain during service on the board the
9 qualifications required by Section 2 of this article;

10 (3) is ineligible for membership under Section 5, 6,
11 or 7 of this article;

12 (4) cannot, because of illness or disability,
13 discharge the member's duties for a substantial part of the
14 member's term; or

15 (5) is absent from more than half of the regularly
16 scheduled board meetings that the member is eligible to attend
17 during a calendar year without an excuse approved by a majority
18 vote of the board.

19 (b) The validity of an action of the board is not affected
20 by the fact that it is taken when a ground for removal of a board
21 member exists.

22 (c) If the executive director has knowledge that a potential
23 ground for removal exists, the executive director shall notify the
24 presiding officer of the board of the potential ground. The
25 presiding officer shall then notify the governor and the attorney
26 general that a potential ground for removal exists. If the
27 potential ground for removal involves the presiding officer, the
28 executive director shall notify the next highest ranking officer of
29 the board, who shall then notify the governor and the attorney
30 general that a potential ground for removal exists.

31 Sec. 9. STAFF. (a) The board shall employ an executive

1 director and administrative and clerical employees as necessary to
2 carry out the board's functions.

3 (b) The board shall develop and implement policies that
4 clearly separate the policymaking responsibilities of the board and
5 the management responsibilities of the executive director and staff
6 of the board.

7 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
8 administer and enforce:

9 (1) The Plumbing License Law (Article 6243-101,
10 Vernon's Texas Civil Statutes);

11 (2) the law regulating environmental performance
12 standards for plumbing fixtures, Chapter 372, Health and Safety
13 Code;

14 (3) the Air Conditioning and Refrigeration Contractor
15 License Law (Article 8861, Vernon's Texas Civil Statutes);

16 (4) the law regulating irrigators, Chapter 34, Water
17 Code; and

18 (5) the law regulating certain connections to public
19 drinking water, Section 341.033(f), Health and Safety Code.

20 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
21 a separate advisory committee on each of the following:

22 (1) plumbing;

23 (2) irrigation;

24 (3) air conditioning and refrigeration; and

25 (4) backflow prevention.

26 (b) The board may appoint additional advisory committees as
27 determined to be necessary by a majority of the board.

28 (c) A member of an advisory committee appointed under this
29 section serves a two-year term. An advisory committee member is
30 not entitled to compensation but is entitled to reimbursement for
31 actual and necessary expenses, including travel expenses, incurred

1 in performing duties as a member of the advisory committee.

2 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
3 separate licenses, certificates, permits, or registrations for the
4 programs under Section 10 of this article in which a license,
5 certificate, permit, or registration is issued by the board.

6 (b) The board may issue more than one type of license,
7 certificate, permit, or registration to a person under a law
8 regulated by the board if the person is qualified to hold each of
9 the licenses, certificates, permits, or registrations issued. The
10 board shall adopt rules relating to the issuance of multiple
11 licenses, certificates, permits, or registrations to a person under
12 laws administered by the board.

13 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
14 from funds appropriated to it, all necessary disbursements to carry
15 out this article and the laws and programs listed in Section 10 of
16 this article.

17 (b) The financial transactions of the board are subject to
18 audit by the state auditor in accordance with Chapter 321,
19 Government Code.

20 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
21 annually with the governor and the presiding officer of each house
22 of the legislature a complete and detailed written report
23 accounting for all funds received and disbursed by the board during
24 the preceding fiscal year. The annual report must be in the form
25 and reported in the time provided by the General Appropriations
26 Act.

27 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
28 the executive director's designee shall develop an intra-agency
29 career ladder program. The program shall require intra-agency
30 posting of all nonentry level positions concurrently with any
31 public posting.

1 (b) The executive director or the executive director's
2 designee shall develop a system of annual performance evaluations
3 based on measurable job tasks. All merit pay for board employees
4 must be based on the system established under this subsection.

5 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
6 executive director or the executive director's designee shall
7 prepare and maintain a written policy statement that implements a
8 program of equal employment opportunity to ensure that all
9 personnel decisions are made without regard to race, color,
10 disability, sex, religion, age, or national origin.

11 (b) The policy statement must include:

12 (1) personnel policies, including policies relating to
13 recruitment, evaluation, selection, training, and promotion of
14 personnel, that show the intent of the board to avoid the unlawful
15 employment practices described by Chapter 21, Labor Code; and

16 (2) an analysis of the extent to which the composition
17 of the board's personnel is in accordance with state and federal
18 law and a description of reasonable methods to achieve compliance
19 with state and federal law.

20 (c) The policy statement must:

21 (1) be updated annually;

22 (2) be reviewed by the state Commission on Human
23 Rights for compliance with Subsection (b)(1); and

24 (3) be filed with the governor's office.

25 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
26 prepare information of public interest describing the functions of
27 the board and the board's procedures by which complaints are filed
28 with and resolved by the board. The board shall make the
29 information available to the public and appropriate state agencies.

30 (b) The board by rule shall establish methods by which
31 consumers and service recipients are notified of the name, mailing

1 address, and telephone number of the board and the license number
2 of the responsible licensee for the purpose of directing complaints
3 to the board. The board or the responsible licensee, as
4 appropriate, shall provide for that notification:

5 (1) on each registration form, application, or written
6 contract for services of an individual or entity regulated by the
7 board;

8 (2) on a sign prominently displayed in the place of
9 business of each individual or entity regulated by the board;

10 (3) in a bill for service provided by an individual or
11 entity regulated by the board; and

12 (4) the company name and license number of the
13 responsible licensee shall be displayed on both sides of all
14 vehicles used in conjunction with contracting or performing work
15 regulated by the board.

16 (c) The board shall list along with its regular telephone
17 number the toll-free telephone number that may be called to present
18 a complaint about a health professional if the toll-free number is
19 established under other state law.

20 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
21 shall develop and implement policies that provide the public with a
22 reasonable opportunity to appear before the board and to speak on
23 any issue under the jurisdiction of the board.

24 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
25 maintain a written plan that describes how a person who does not
26 speak English can be provided reasonable access to the board's
27 programs. The board shall also comply with federal and state laws
28 for program and facility accessibility.

29 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
30 INFORMATION. (a) A person who is appointed to and qualifies for
31 office as a member of the board may not vote, deliberate, or be

1 counted as a member in attendance at a meeting of the board until
2 the person completes a training program that complies with this
3 section.

4 (b) The training program must provide the person with
5 information regarding:

6 (1) this article and the statutes enforced by the
7 board;

8 (2) the programs operated by the board;

9 (3) the role and functions of the board;

10 (4) the rules of the board with an emphasis on the
11 rules that relate to disciplinary and investigatory authority;

12 (5) the current budget for the board;

13 (6) the results of the most recent formal audit of the
14 board;

15 (7) the requirements of:

16 (A) the open meetings law, Chapter 551,
17 Government Code;

18 (B) the public information law, Chapter 552,
19 Government Code;

20 (C) the administrative procedure law, Chapter
21 2001, Government Code; and

22 (D) other laws relating to public officials,
23 including conflict-of-interest laws; and

24 (8) any applicable ethics policies adopted by the
25 board or the Texas Ethics Commission.

26 (c) A person appointed to the board is entitled to
27 reimbursement, as provided by the General Appropriations Act, for
28 the travel expenses incurred in attending the training program
29 regardless of whether the attendance at the program occurs before
30 or after the person qualifies for office.

31 (d) The executive director or the executive director's

1 designee shall provide to members of the board and to board
2 employees, as often as necessary, information regarding the
3 requirements for office or employment under this article, including
4 information regarding a person's responsibilities under applicable
5 laws relating to standards of conduct for state officers or
6 employees.

7 Sec. 21. SUNSET PROVISION. The Texas State Board of
8 Mechanical Industries is subject to Chapter 325, Government Code
9 (Texas Sunset Act). Unless continued in existence as provided by
10 that chapter, the board is abolished and this article expires
11 September 1, 2011.

12 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
13 a license, endorsement, certification, or registration, probate a
14 license, endorsement, certification, or registration suspension, or
15 reprimand any person or entity regulated by the board for any
16 violation of this article or any regulatory statute administered by
17 the board or any rule adopted under this article or any rule
18 adopted under any regulatory statute administered by the board. A
19 violation of this article shall include but not be limited to:
20 obtaining a license through error or fraud; having recklessly,
21 wilfully, negligently, or arbitrarily violated municipal or other
22 political subdivision rules or ordinances regulating any work
23 governed by the board; making a substantial misrepresentation of
24 services to be provided or which have been provided; making any
25 false promise with intent to influence, persuade, or induce an
26 individual to contract for services. Grounds for suspension or
27 revocation of a license, endorsement, certification, or
28 registration due to suspected incompetence or wilful violation by a
29 licensee may be determined through retesting procedures.

30 (b) The board may assess an administrative penalty against a
31 person or entity who violates a provision of this article, a law

1 administered by the board, or a rule or order adopted by the board
2 as provided by this section.

3 (c) The penalty for each violation may be in an amount not
4 to exceed \$1,000. Each day a violation continues or occurs may be
5 considered a separate violation for purposes of penalty assessment.
6 In determining the amount of the penalty, the board shall consider:

7 (1) the seriousness of the violation, including the
8 nature, circumstances, extent, and gravity of the prohibited acts
9 and the hazard or potential hazard posed to the health or safety of
10 the public;

11 (2) the economic damage to property or the environment
12 caused by the violation;

13 (3) the history of previous violations;

14 (4) the amount necessary to deter future violations;

15 (5) efforts to correct the violation; and

16 (6) any other matter that justice may require.

17 (d) If the board proposes to assess an administrative
18 penalty, refuse a person's application for licensure, endorsement,
19 certification, or registration, or suspend or revoke a person's
20 license, endorsement, certification, or registration, the person is
21 entitled to a hearing, if requested, governed by the Administrative
22 Procedure Act, Chapter 2001, Government Code.

23 (e) The executive director or the executive director's staff
24 designee or staff designees shall oversee and conduct
25 investigations, conduct informal conferences, negotiate agreed
26 final orders, draft formal complaints, recommend administrative
27 penalties, and pursue cases involving violations of this article or
28 any regulatory statute administered by the board or any rule
29 adopted under this article or any rule adopted under any regulatory
30 statute administered by the board at the State Office of
31 Administrative Hearings. Proceedings for assessing administrative

1 penalties or for the refusal, suspension, or revocation of a
2 license, endorsement, certification, or registration are subject to
3 the Administrative Procedure Act, Chapter 2001, Government Code.

4 (f) Within the 30-day period immediately following the day
5 on which a board order assessing an administrative penalty to a
6 person or entity becomes final as provided by Section 2001.144,
7 Government Code, the person or entity charged with the penalty
8 shall:

9 (1) pay the penalty in full; or

10 (2) if the person files a petition for judicial review
11 contesting either the fact of the violation or the amount of the
12 penalty or contesting both the fact of the violation and the amount
13 of the penalty:

14 (A) forward the amount to the board for
15 placement in an escrow account; or

16 (B) in lieu of payment into escrow, post with
17 the board a supersedeas bond in a form approved by the board for
18 the amount of the penalty, the bond to be effective until all
19 judicial review of the order or decision is final.

20 (g) If a person charged is financially unable to either
21 forward the amount of the penalty for placement in an escrow
22 account or post a supersedeas bond for the amount of the penalty,
23 the person may satisfy the requirements of Subsection (f)(2) of
24 this section by filing with the board an affidavit sworn by the
25 person charged, stating that the person is financially unable to
26 either forward the amount of the penalty or post a bond.

27 (h) If the person charged fails to pay the penalty in full
28 as provided under Subsection (f)(1) of this section or forward the
29 money, post the bond, or file the affidavit as provided by
30 Subsection (f) or (g) of this section, the board may forward the
31 matter to the attorney general for enforcement.

1 (i) Judicial review of the order or decision of the board
2 assessing the penalty shall be under the substantial evidence rule
3 and shall be instituted by filing a petition with a district court
4 in Travis County, as provided by Subchapter G, Chapter 2001,
5 Government Code.

6 (j) If the penalty is reduced or not assessed by the court,
7 the board shall remit to the person charged the appropriate amount
8 plus accrued interest if the penalty has been paid or shall execute
9 a release of the bond if a supersedeas bond has been posted. The
10 accrued interest on amounts remitted by the board under this
11 subsection shall be paid at a rate equal to the rate charged on
12 loans to depository institutions by the New York Federal Reserve
13 Bank and shall be paid for the period beginning on the date the
14 penalty is paid to the board under Subsection (f) of this section
15 and ending on the date the penalty is remitted.

16 (k) An administrative penalty collected under Subsection (b)
17 of this section shall be deposited in the general revenue fund.

18 (l) A person commits an offense if the person violates this
19 article or any regulatory statute administered by the board or any
20 rule adopted under this article or any rule adopted under any
21 regulatory statute administered by the board, engages in activities
22 for which a license, endorsement, certification, or registration is
23 required without a license, endorsement, certification, or
24 registration issued under this article, or employs or utilizes an
25 unlicensed, unendorsed, uncertified, or unregistered person to
26 engage in activities for which a license, endorsement,
27 certification, or registration is required by this article. An
28 offense under this subsection is a Class C misdemeanor.

29 (m) A field representative of the board or, within the
30 jurisdiction of that municipality or water district, a municipal
31 inspector or water district inspector or other inspector authorized

1 to inspect work regulated by the board, may issue citations to
2 persons who engage in conduct described by Subsection (1) of this
3 section.

4 (n) Citations issued under Subsection (1) and Subsection (m)
5 of this section may be filed in a county justice court or municipal
6 court for adjudication of the offense or offenses.

7 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
8 adopt rules for a law or program regulated by the board as
9 necessary to comply with any federal regulation that imposes
10 standards or requirements on that law or program.

11 SECTION 2. The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes) is amended by adding Section 1A and
13 amending Section 3A to read as follows:

14 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
15 Act is administered by the Texas State Board of Mechanical
16 Industries in accordance with Article 9150, Revised Statutes. To
17 the extent of a conflict between this Act and Article 9150, Revised
18 Statutes, that article prevails.

19 (b) Any reference in this Act to the Texas State Board of
20 Plumbing Examiners means the Texas State Board of Mechanical
21 Industries.

22 (c) The Texas State Board of Plumbing Examiners is abolished
23 and the functions of that board are exercised by the Texas State
24 Board of Mechanical Industries.

25 Sec. 3A. CERTIFICATION RELATING TO RESIDENTIAL WATER
26 TREATMENT FACILITIES. (a) The executive director of the Texas
27 State Board of Mechanical Industries or the executive director's
28 [Commissioner-of-Health-or-his] designee shall certify persons as
29 being qualified for the installation, exchange, servicing, and
30 repair of residential water treatment facilities [as--defined--by
31 Subsection-(g)-of-Section-2-of-this-Act]. The Texas State Board of

1 Mechanical Industries [~~Board--of--Health~~] shall set standards for
2 certification to ensure the public health and to protect the public
3 from unqualified persons engaging in activities relating to water
4 treatment. Nothing in this section shall be construed to require
5 that persons licensed pursuant to this Act are subject to
6 certification under this section.

7 (b) [~~Before--a--certificate--is--issued--or--renewed--under--this~~
8 ~~section,--an--applicant--or--holder--of--a--certificate--shall--be--required~~
9 ~~to--pay--a--fee--of--\$10--a--year.~~] On receipt of the required fee, the
10 Texas State Board of Mechanical Industries [~~Department--of--Health~~]
11 shall issue to a qualified person a certificate stating that the
12 person is qualified for the installation, exchange, servicing, and
13 repair of residential water treatment facilities. The Texas State
14 Board of Mechanical Industries [~~Board-of-Health~~] shall adopt rules
15 establishing classes of certificates, duration of certificates, and
16 fees.

17 (c) All fees received by the Texas State Board of Mechanical
18 Industries [~~Department--of--Health~~] under this section shall be
19 deposited in the State Treasury to the credit of the General
20 Revenue Fund.

21 SECTION 3. The Air Conditioning and Refrigeration Contractor
22 License Law (Article 8861, Vernon's Texas Civil Statutes) is
23 amended by adding Section 1A to read as follows:

24 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

25 (a) This Act is administered by the Texas State Board of
26 Mechanical Industries in accordance with Article 9150, Revised
27 Statutes. To the extent of a conflict between this Act and Article
28 9150, Revised Statutes, that article prevails.

29 (b) Any reference in this Act to the Texas Department of
30 Licensing and Regulation, the commissioner of licensing and
31 regulation, or the Air Conditioning and Refrigeration Contractors

1 Advisory Board means the Texas State Board of Mechanical
2 Industries.

3 (c) The Air Conditioning and Refrigeration Contractors
4 Advisory Board is abolished and the functions of that board and the
5 functions, under this Act, of the Texas Department of Licensing and
6 Regulation and the commissioner of licensing and regulation are
7 exercised by the Texas State Board of Mechanical Industries.

8 SECTION 4. Section 341.033(f), Health and Safety Code, is
9 amended to read as follows:

10 (f) A public drinking water supply may not be connected to a
11 sprinkling, condensing, cooling, plumbing, or other system unless
12 the connection is designed to ensure against a backflow or
13 siphonage of sewage or contaminated water into the drinking water
14 supply. Notwithstanding any other provision of this chapter, this
15 subsection is administered by the Texas State Board of Mechanical
16 Industries in accordance with Article 9150, Revised Statutes. To
17 the extent of a conflict between this chapter and Article 9150,
18 Revised Statutes, regarding the administration of this subsection,
19 Article 9150 prevails. Any reference in this chapter to the Texas
20 Natural Resource Conservation Commission, as it applies to this
21 subsection, means the Texas State Board of Mechanical Industries.

22 SECTION 5. Chapter 372, Health and Safety Code, is amended
23 by adding Section 372.0015 to read as follows:

24 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
25 administered by the Texas State Board of Mechanical Industries in
26 accordance with Article 9150, Revised Statutes. To the extent of a
27 conflict between this chapter and Article 9150, Revised Statutes,
28 that article prevails.

29 (b) Any reference in this chapter to the Texas Natural
30 Resource Conservation Commission means the Texas State Board of
31 Mechanical Industries.

1 SECTION 6. Chapter 34, Water Code, is amended by adding
2 Section 34.0015 to read as follows:

3 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.

4 (a) This chapter is administered by the Texas State Board of
5 Mechanical Industries in accordance with Article 9150, Revised
6 Statutes. To the extent of a conflict between this chapter and
7 Article 9150, Revised Statutes, that article prevails.

8 (b) Any reference in this chapter to the Texas Natural
9 Resource Conservation Commission or the Texas irrigators advisory
10 council means the Texas State Board of Mechanical Industries.

11 (c) The Texas irrigators advisory council is abolished and
12 the functions of that board and the functions, under this chapter,
13 of the Texas Natural Resource Conservation Commission are exercised
14 by the Texas State Board of Mechanical Industries.

15 SECTION 7. (a) As soon as possible after the effective date
16 of this Act, the governor shall appoint the initial members of the
17 Texas State Board of Mechanical Industries in accordance with
18 Article 9150, Revised Statutes, as added by this Act.

19 (b) A person who is serving on the day immediately before
20 the effective date of this Act as a member of the governing body of
21 an agency abolished by this Act is eligible for appointment to the
22 Texas State Board of Mechanical Industries if the person meets the
23 requirements set forth in Section 2, Article 9150, Revised
24 Statutes, as added by this Act.

25 (c) In making the initial appointments, the governor shall
26 designate members to serve terms as follows:

27 (1) three members to serve for terms expiring February
28 1, 2001;

29 (2) three members to serve for terms expiring February
30 1, 2003; and

31 (3) three members to serve for terms expiring February

1 1, 2005.

2 (d) The Texas State Board of Mechanical Industries may not
3 take any action and is not created until the day after the date the
4 last appointee to the initial board takes office. On the date of
5 its creation, the board assumes its functions and:

6 (1) the Air Conditioning and Refrigeration Contractors
7 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
8 irrigators advisory council are abolished;

9 (2) the obligations, rights, contracts, records and
10 other property, and personnel of, and unspent money appropriated to
11 or for, the abolished boards and council or the governing body for
12 the laws or programs transferred to the new board under this Act
13 are transferred to the Texas State Board of Mechanical Industries;

14 (3) the rules of the abolished boards and council or
15 the governing body for the laws or programs transferred to the new
16 board under this Act are continued in effect as rules of the Texas
17 State Board of Mechanical Industries until superseded by rule of
18 the new board;

19 (4) the licenses, certificates, permits, or
20 registrations in effect that were issued by the abolished boards or
21 council or the governing body for the laws or programs transferred
22 to the new board under this Act are continued in effect as
23 licenses, certificates, permits, or registrations of the Texas
24 State Board of Mechanical Industries;

25 (5) a complaint or investigation pending before the
26 abolished boards or council or the governing body for the laws or
27 programs transferred to the new board under this Act is transferred
28 without change in status to the Texas State Board of Mechanical
29 Industries;

30 (6) a contested case pending before the abolished
31 boards and council or the governing body for the laws or programs

1 transferred to the new board under this Act is transferred to the
2 Texas State Board of Mechanical Industries and actions taken in the
3 proceeding are treated as if taken by the Texas State Board of
4 Mechanical Industries; and

5 (7) any reference in a law to the abolished boards or
6 council means the Texas State Board of Mechanical Industries.

7 (e) Regardless of the changes in law made by this Act, until
8 the date that the Air Conditioning and Refrigeration Contractors
9 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
10 irrigators advisory council are abolished as provided by this
11 section, the boards and council continue in existence and shall
12 administer their functions under the law that governed the boards
13 and council before the effective date of this Act, and the prior
14 law is continued in effect for that purpose.

15 (f) The Texas State Board of Mechanical Industries shall
16 adopt rules under this Act not later than December 1, 1999.

17 SECTION 8. The following laws are repealed:

18 (1) Sections 3(b), 4, 4a, 5A, 6, and 7, The Plumbing
19 License Law (Article 6243-101, Vernon's Texas Civil Statutes);

20 (2) Section 3A, Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes); and

23 (3) Section 34.003, Water Code.

24 SECTION 9. This Act takes effect September 1, 1999.

25 SECTION 10. The importance of this legislation and the
26 crowded condition of the calendars in both houses create an
27 emergency and an imperative public necessity that the
28 constitutional rule requiring bills to be read on three several
29 days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 26 1999

Betty King
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY Harris

- 1 Amend Floor Amendment No. 1 to H.B. 2155, SECTION 8(1) by
- 2 striking "3(b)"

SENATE AMENDMENTS 99 MAY 27 1977
2nd Printing HOUSE OF REPRESENTATIVES

By Yarbrough

H.B. No. 2155

A BILL TO BE ENTITLED

AN ACT

relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical Industries consists of 15 members as follows:

(1) one member who has at least 10 years of practical experience as a master plumber;

(2) one member who has at least five years of practical experience as a journeyman plumber;

(3) one member who has at least five years of experience as a plumbing contractor;

(4) one member who has at least five years of practical experience as a plumbing inspector;

(5) one member who is a licensed air conditioning and refrigeration contractor;

(6) one member who has held an air conditioning and

1 refrigeration license A for at least five years;

2 (7) one member who has held an air conditioning and
3 refrigeration license B for at least five years;

4 (8) one member who is a licensed irrigation installer
5 for at least 10 years;

6 (9) one member who is a licensed irrigation contractor
7 for at least five years;

8 (10) one member who is a licensed backflow prevention
9 specialist;

10 (11) one member who is a licensed engineer who has
11 professional engineering experience in plumbing design or
12 mechanical design; and

13 (12) four members who are representatives of the
14 public.

15 (b) Members of the board are appointed by the governor with
16 the advice and consent of the senate.

17 (c) Appointments to the board shall be made without regard
18 to the race, color, disability, sex, religion, age, or national
19 origin of the appointees.

20 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
21 shall designate a member of the board as the presiding officer of
22 the board to serve in that capacity at the will of the governor.
23 The board annually shall select an assistant presiding officer and
24 a secretary-treasurer.

25 (b) The board shall hold at least two regular meetings each
26 year. The board may not hold more than four meetings each year
27 unless at least nine members of the board request the presiding

1 officer in writing to call additional meetings.

2 (c) A member of the board is entitled to a per diem as set
3 by the General Appropriations Act for each day the member engages
4 in the business of the board. A member may not receive
5 compensation for travel expenses, including expenses for meals and
6 lodging, other than transportation expenses as provided by the
7 General Appropriations Act.

8 Sec. 4. TERMS. (a) Members of the board are appointed for
9 staggered six-year terms, with five members' terms expiring on
10 February 1 of each odd-numbered year.

11 (b) A member appointed to fill a vacancy shall hold office
12 for the remainder of that term.

13 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
14 a public member of the board if the person or the person's spouse:

15 (1) is registered, certified, or licensed by a
16 regulatory agency in the field of plumbing or mechanical work;

17 (2) is employed by or participates in the management
18 of a business entity or other organization regulated by or
19 receiving money from the board;

20 (3) owns or controls, directly or indirectly, more
21 than a 10 percent interest in a business entity or other
22 organization regulated by or receiving money from the board; or

23 (4) uses or receives a substantial amount of tangible
24 goods, services, or money from the board other than compensation or
25 reimbursement authorized by law for board membership, attendance,
26 or expenses.

27 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this

1 section, "Texas trade association" means a cooperative and
2 voluntarily joined association of business or professional
3 competitors in this state designed to assist its members and its
4 industry or profession in dealing with mutual business or
5 professional problems and in promoting their common interest.

6 (b) A person may not be a member of the board and may not be
7 a board employee employed in a "bona fide executive,
8 administrative, or professional capacity," as that phrase is used
9 for purposes of establishing an exemption to the overtime
10 provisions of the federal Fair Labor Standards Act of 1938 (29
11 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

12 (1) the person is an officer, employee, or paid
13 consultant of a Texas trade association in the field of plumbing or
14 mechanical work; or

15 (2) the person's spouse is an officer, manager, or
16 paid consultant of a Texas trade association in the field of
17 plumbing or mechanical work.

18 (c) A person may not be a member of the board or act as the
19 general counsel to the board if the person is required to register
20 as a lobbyist under Chapter 305, Government Code, because of the
21 person's activities for compensation on behalf of a profession
22 related to the operation of the board.

23 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
24 as a member of the board or act as the general counsel to the board
25 if the person is required to register as a lobbyist under Chapter
26 305, Government Code, because of the person's activities for
27 compensation on behalf of a profession related to the operation of

1 the board.

2 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
3 for removal from the board that a member:

4 (1) does not have at the time of taking office the
5 qualifications required by Section 2 of this article;

6 (2) does not maintain during service on the board the
7 qualifications required by Section 2 of this article;

8 (3) is ineligible for membership under Section 5, 6,
9 or 7 of this article;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the
12 member's term; or

13 (5) is absent from more than half of the regularly
14 scheduled board meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority
16 vote of the board.

17 (b) The validity of an action of the board is not affected
18 by the fact that it is taken when a ground for removal of a board
19 member exists.

20 (c) If the executive director has knowledge that a potential
21 ground for removal exists, the executive director shall notify the
22 presiding officer of the board of the potential ground. The
23 presiding officer shall then notify the governor and the attorney
24 general that a potential ground for removal exists. If the
25 potential ground for removal involves the presiding officer, the
26 executive director shall notify the next highest ranking officer of
27 the board, who shall then notify the governor and the attorney

1 general that a potential ground for removal exists.

2 Sec. 9. STAFF. (a) The board shall employ an executive
3 director and administrative and clerical employees as necessary to
4 carry out the board's functions.

5 (b) The board shall develop and implement policies that
6 clearly separate the policymaking responsibilities of the board and
7 the management responsibilities of the executive director and staff
8 of the board.

9 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
10 administer and enforce:

11 (1) The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes);

13 (2) the law regulating environmental performance
14 standards for plumbing fixtures, Chapter 372, Health and Safety
15 Code;

16 (3) the Air Conditioning and Refrigeration Contractor
17 License Law (Article 8861, Vernon's Texas Civil Statutes);

18 (4) the law regulating irrigators, Chapter 34, Water
19 Code; and

20 (5) the law regulating certain connections to public
21 drinking water, Section 341.033(f), Health and Safety Code.

22 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
23 a separate advisory committee on each of the following:

24 (1) plumbing;

25 (2) irrigation;

26 (3) air conditioning and refrigeration; and

27 (4) backflow prevention.

1 (b) The board may appoint additional advisory committees as
2 determined to be necessary by a majority of the board.

3 (c) A member of an advisory committee appointed under this
4 section serves a two-year term. An advisory committee member is
5 not entitled to compensation but is entitled to reimbursement for
6 actual and necessary expenses, including travel expenses, incurred
7 in performing duties as a member of the advisory committee.

8 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
9 separate licenses, certificates, permits, or registrations for the
10 programs under Section 10 of this article in which a license,
11 certificate, permit, or registration is issued by the board.

12 (b) The board may issue more than one type of license,
13 certificate, permit, or registration to a person under a law
14 regulated by the board if the person is qualified to hold each of
15 the licenses, certificates, permits, or registrations issued. The
16 board shall adopt rules relating to the issuance of multiple
17 licenses, certificates, permits, or registrations to a person under
18 laws administered by the board.

19 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
20 from funds appropriated to it, all necessary disbursements to carry
21 out this article and the laws and programs listed in Section 10 of
22 this article.

23 (b) The financial transactions of the board are subject to
24 audit by the state auditor in accordance with Chapter 321,
25 Government Code.

26 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
27 annually with the governor and the presiding officer of each house

1 of the legislature a complete and detailed written report
2 accounting for all funds received and disbursed by the board during
3 the preceding fiscal year. The annual report must be in the form
4 and reported in the time provided by the General Appropriations
5 Act.

6 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
7 the executive director's designee shall develop an intra-agency
8 career ladder program. The program shall require intra-agency
9 posting of all nonentry level positions concurrently with any
10 public posting.

11 (b) The executive director or the executive director's
12 designee shall develop a system of annual performance evaluations
13 based on measurable job tasks. All merit pay for board employees
14 must be based on the system established under this subsection.

15 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
16 executive director or the executive director's designee shall
17 prepare and maintain a written policy statement that implements a
18 program of equal employment opportunity to ensure that all
19 personnel decisions are made without regard to race, color,
20 disability, sex, religion, age, or national origin.

21 (b) The policy statement must include:

22 (1) personnel policies, including policies relating to
23 recruitment, evaluation, selection, training, and promotion of
24 personnel, that show the intent of the board to avoid the unlawful
25 employment practices described by Chapter 21, Labor Code; and

26 (2) an analysis of the extent to which the composition
27 of the board's personnel is in accordance with state and federal

1 law and a description of reasonable methods to achieve compliance
2 with state and federal law.

3 (c) The policy statement must:

4 (1) be updated annually;

5 (2) be reviewed by the state Commission on Human
6 Rights for compliance with Subsection (b)(1); and

7 (3) be filed with the governor's office.

8 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
9 prepare information of public interest describing the functions of
10 the board and the board's procedures by which complaints are filed
11 with and resolved by the board. The board shall make the
12 information available to the public and appropriate state agencies.

13 (b) The board by rule shall establish methods by which
14 consumers and service recipients are notified of the name, mailing
15 address, and telephone number of the board and the license number
16 of the responsible licensee for the purpose of directing complaints
17 to the board. The board or the responsible licensee, as
18 appropriate, shall provide for that notification:

19 (1) on each registration form, application, or written
20 contract for services of an individual or entity regulated by the
21 board;

22 (2) on a sign prominently displayed in the place of
23 business of each individual or entity regulated by the board; and

24 (3) in a bill for service provided by an individual or
25 entity regulated by the board; and

26 (4) the company name and license number of the
27 responsible licensee shall be displayed on both sides of all

1 vehicles used in conjunction with contracting or performing work
2 regulated by the board.

3 (c) The board shall list along with its regular telephone
4 number the toll-free telephone number that may be called to present
5 a complaint about a health professional if the toll-free number is
6 established under other state law.

7 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
8 shall develop and implement policies that provide the public with a
9 reasonable opportunity to appear before the board and to speak on
10 any issue under the jurisdiction of the board.

11 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
12 maintain a written plan that describes how a person who does not
13 speak English can be provided reasonable access to the board's
14 programs. The board shall also comply with federal and state laws
15 for program and facility accessibility.

16 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
17 INFORMATION. (a) A person who is appointed to and qualifies for
18 office as a member of the board may not vote, deliberate, or be
19 counted as a member in attendance at a meeting of the board until
20 the person completes a training program that complies with this
21 section.

22 (b) The training program must provide the person with
23 information regarding:

24 (1) this article and the statutes enforced by the
25 board;

26 (2) the programs operated by the board;

27 (3) the role and functions of the board;

1 (4) the rules of the board with an emphasis on the
2 rules that relate to disciplinary and investigatory authority;

3 (5) the current budget for the board;

4 (6) the results of the most recent formal audit of the
5 board;

6 (7) the requirements of:

7 (A) the open meetings law, Chapter 551,
8 Government Code;

9 (B) the public information law, Chapter 552,
10 Government Code;

11 (C) the administrative procedure law, Chapter
12 2001, Government Code; and

13 (D) other laws relating to public officials,
14 including conflict-of-interest laws; and

15 (8) any applicable ethics policies adopted by the
16 board or the Texas Ethics Commission.

17 (c) A person appointed to the board is entitled to
18 reimbursement, as provided by the General Appropriations Act, for
19 the travel expenses incurred in attending the training program
20 regardless of whether the attendance at the program occurs before
21 or after the person qualifies for office.

22 (d) The executive director or the executive director's
23 designee shall provide to members of the board and to board
24 employees, as often as necessary, information regarding the
25 requirements for office or employment under this article, including
26 information regarding a person's responsibilities under applicable
27 laws relating to standards of conduct for state officers or

1 employees.

2 Sec. 21. SUNSET PROVISION. The Texas State Board of
3 Mechanical Industries is subject to Chapter 325, Government Code
4 (Texas Sunset Act). Unless continued in existence as provided by
5 that chapter, the board is abolished and this article expires
6 September 1, 2011.

7 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
8 a license, endorsement, certification, or registration, probate a
9 license, endorsement, certification, or registration suspension, or
10 reprimand any person or entity regulated by the board for any
11 violation of this article or any regulatory statute administered by
12 the board or any rule adopted under this article or any rule
13 adopted under any regulatory statute administered by the board. A
14 violation of this article shall include but not be limited to:
15 obtaining a license through error or fraud; having recklessly,
16 wilfully, negligently, or arbitrarily violated municipal or other
17 political subdivision rules or ordinances regulating any work
18 governed by the board; making a substantial misrepresentation of
19 services to be provided or which have been provided; making any
20 false promise with intent to influence, persuade, or induce an
21 individual to contract for services. Grounds for suspension or
22 revocation of a license, endorsement, certification, or
23 registration due to suspected incompetence or wilful violation by a
24 licensee may be determined through retesting procedures.

25 (b) The board may assess an administrative penalty against a
26 person or entity who violates a provision of this article, a law
27 administered by the board, or a rule or order adopted by the board

1 as provided by this section.

2 (c) The penalty for each violation may be in an amount not
3 to exceed \$1,000. Each day a violation continues or occurs may be
4 considered a separate violation for purposes of penalty assessment.
5 In determining the amount of the penalty, the board shall consider:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, extent, and gravity of the prohibited acts
8 and the hazard or potential hazard posed to the health or safety of
9 the public;

10 (2) the economic damage to property or the environment
11 caused by the violation;

12 (3) the history of previous violations;

13 (4) the amount necessary to deter future violations;

14 (5) efforts to correct the violation; and

15 (6) any other matter that justice may require.

16 (d) If the board proposes to assess an administrative
17 penalty, refuse a person's application for licensure, endorsement,
18 certification, or registration, or suspend or revoke a person's
19 license, endorsement, certification, or registration, the person is
20 entitled to a hearing, if requested, governed by the Administrative
21 Procedure Act, Chapter 2001, Government Code.

22 (e) The executive director or the executive director's staff
23 designee or staff designees shall oversee and conduct
24 investigations, conduct informal conferences, negotiate agreed
25 final orders, draft formal complaints, recommend administrative
26 penalties, and pursue cases involving violations of this article or
27 any regulatory statute administered by the board or any rule

1 adopted under this article or any rule adopted under any regulatory
2 statute administered by the board at the State Office of
3 Administrative Hearings. Proceedings for assessing administrative
4 penalties or for the refusal, suspension, or revocation of a
5 license, endorsement, certification, or registration are subject to
6 the Administrative Procedure Act, Chapter 2001, Government Code.

7 (f) Within the 30-day period immediately following the day
8 on which a board order assessing an administrative penalty to a
9 person or entity becomes final as provided by Section 2001.144,
10 Government Code, the person or entity charged with the penalty
11 shall:

12 (1) pay the penalty in full; or

13 (2) if the person files a petition for judicial review
14 contesting either the fact of the violation or the amount of the
15 penalty or contesting both the fact of the violation and the amount
16 of the penalty:

17 (A) forward the amount to the board for
18 placement in an escrow account; or

19 (B) in lieu of payment into escrow, post with
20 the board a supersedeas bond in a form approved by the board for
21 the amount of the penalty, the bond to be effective until all
22 judicial review of the order or decision is final.

23 (g) If a person charged is financially unable to either
24 forward the amount of the penalty for placement in an escrow
25 account or post a supersedeas bond for the amount of the penalty,
26 the person may satisfy the requirements of Subsection (f)(2) of
27 this section by filing with the board an affidavit sworn by the

1 person charged, stating that the person is financially unable to
2 either forward the amount of the penalty or post a bond.

3 (h) If the person charged fails to pay the penalty in full
4 as provided under Subsection (f)(1) of this section or forward the
5 money, post the bond, or file the affidavit as provided by
6 Subsection (f) or (g) of this section, the board may forward the
7 matter to the attorney general for enforcement.

8 (i) Judicial review of the order or decision of the board
9 assessing the penalty shall be under the substantial evidence rule
10 and shall be instituted by filing a petition with a district court
11 in Travis County, as provided by Subchapter G, Chapter 2001,
12 Government Code.

13 (j) If the penalty is reduced or not assessed by the court,
14 the board shall remit to the person charged the appropriate amount
15 plus accrued interest if the penalty has been paid or shall execute
16 a release of the bond if a supersedeas bond has been posted. The
17 accrued interest on amounts remitted by the board under this
18 subsection shall be paid at a rate equal to the rate charged on
19 loans to depository institutions by the New York Federal Reserve
20 Bank and shall be paid for the period beginning on the date the
21 penalty is paid to the board under Subsection (f) of this section
22 and ending on the date the penalty is remitted.

23 (k) An administrative penalty collected under Subsection (b)
24 of this section shall be deposited in the general revenue fund.

25 (l) A person commits an offense if the person violates this
26 article or any regulatory statute administered by the board or any
27 rule adopted under this article or any rule adopted under any

1 regulatory statute administered by the board, engages in activities
2 for which a license, endorsement, certification, or registration is
3 required without a license, endorsement, certification, or
4 registration issued under this article, or employs or utilizes an
5 unlicensed, unendorsed, uncertified, or unregistered person to
6 engage in activities for which a license, endorsement,
7 certification, or registration is required by this article. An
8 offense under this subsection is a Class C misdemeanor.

9 (m) A field representative of the board or, within the
10 jurisdiction of that municipality or water district, a municipal
11 inspector or water district inspector or other inspector authorized
12 to inspect work regulated by the board, may issue citations to
13 persons who engage in conduct described by Subsection (l) of this
14 section.

15 (n) Citations issued under Subsection (l) and Subsection (m)
16 of this section may be filed in a county justice court or municipal
17 court for adjudication of the offense or offenses.

18 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
19 adopt rules for a law or program regulated by the board as
20 necessary to comply with any federal regulation that imposes
21 standards or requirements on that law or program.

22 SECTION 2. The Plumbing License Law (Article 6243-101,
23 Vernon's Texas Civil Statutes) is amended by adding Section 1A to
24 read as follows:

25 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
26 Act is administered by the Texas State Board of Mechanical
27 Industries in accordance with Article 9150, Revised Statutes. To

1 the extent of a conflict between this Act and Article 9150, Revised
2 Statutes, that article prevails.

3 (b) Any reference in this Act to the Texas State Board of
4 Plumbing Examiners means the Texas State Board of Mechanical
5 Industries.

6 (c) The Texas State Board of Plumbing Examiners is abolished
7 and the functions of that board are exercised by the Texas State
8 Board of Mechanical Industries.

9 SECTION 3. The Air Conditioning and Refrigeration Contractor
10 License Law (Article 8861, Vernon's Texas Civil Statutes) is
11 amended by adding Section 1A to read as follows:

12 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

13 (a) This Act is administered by the Texas State Board of
14 Mechanical Industries in accordance with Article 9150, Revised
15 Statutes. To the extent of a conflict between this Act and Article
16 9150, Revised Statutes, that article prevails.

17 (b) Any reference in this Act to the Texas Department of
18 Licensing and Regulation, the commissioner of licensing and
19 regulation, or the Air Conditioning and Refrigeration Contractors
20 Advisory Board means the Texas State Board of Mechanical
21 Industries.

22 (c) The Air Conditioning and Refrigeration Contractors
23 Advisory Board is abolished and the functions of that board and the
24 functions, under this Act, of the Texas Department of Licensing and
25 Regulation and the commissioner of licensing and regulation are
26 exercised by the Texas State Board of Mechanical Industries.

27 SECTION 4. Section 341.033(f), Health and Safety Code, is

1 amended to read as follows:

2 (f) A public drinking water supply may not be connected to a
3 sprinkling, condensing, cooling, plumbing, or other system unless
4 the connection is designed to ensure against a backflow or
5 siphonage of sewage or contaminated water into the drinking water
6 supply. Notwithstanding any other provision of this chapter, this
7 subsection is administered by the Texas State Board of Mechanical
8 Industries in accordance with Article 9150, Revised Statutes. To
9 the extent of a conflict between this chapter and Article 9150,
10 Revised Statutes, regarding the administration of this subsection,
11 Article 9150 prevails. Any reference in this chapter to the Texas
12 Natural Resource Conservation Commission, as it applies to this
13 subsection, means the Texas State Board of Mechanical Industries.

14 SECTION 5. Chapter 372, Health and Safety Code, is amended
15 by adding Section 372.0015 to read as follows:

16 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
17 administered by the Texas State Board of Mechanical Industries in
18 accordance with Article 9150, Revised Statutes. To the extent of a
19 conflict between this chapter and Article 9150, Revised Statutes,
20 that article prevails.

21 (b) Any reference in this chapter to the Texas Natural
22 Resource Conservation Commission means the Texas State Board of
23 Mechanical Industries.

24 SECTION 6. Chapter 34, Water Code, is amended by adding
25 Section 34.0015 to read as follows:

26 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.
27 (a) This chapter is administered by the Texas State Board of

1 Mechanical Industries in accordance with Article 9150, Revised
2 Statutes. To the extent of a conflict between this chapter and
3 Article 9150, Revised Statutes, that article prevails.

4 (b) Any reference in this chapter to the Texas Natural
5 Resource Conservation Commission or the Texas irrigators advisory
6 council means the Texas State Board of Mechanical Industries.

7 (c) The Texas irrigators advisory council is abolished and
8 the functions of that board and the functions, under this chapter,
9 of the Texas Natural Resource Conservation Commission are exercised
10 by the Texas State Board of Mechanical Industries.

11 SECTION 7. (a) As soon as possible after the effective date
12 of this Act, the governor shall appoint the initial members of the
13 Texas State Board of Mechanical Industries in accordance with
14 Article 9150, Revised Statutes, as added by this Act.

15 (b) A person who is serving on the day immediately before
16 the effective date of this Act as a member of the governing body of
17 an agency abolished by this Act is eligible for appointment to the
18 Texas State Board of Mechanical Industries if the person meets the
19 requirements set forth in Section 2, Article 9150, Revised
20 Statutes, as added by this Act.

21 (c) In making the initial appointments, the governor shall
22 designate members to serve terms as follows:

23 (1) one master plumber member, one licensed backflow
24 prevention specialist member, one plumbing inspector member, one
25 licensed irrigation installer member, and one public member serve
26 for terms expiring February 1, 2001;

27 (2) one journeyman plumber member, one air

1 conditioning and refrigeration contractor member, one engineer
2 member, one air conditioning and refrigeration license A member,
3 and one public member serve for terms expiring February 1, 2003;
4 and

5 (3) one plumbing contractor member, one air
6 conditioning and refrigeration license B member, one licensed
7 irrigation contractor, and two public members serve for terms
8 expiring February 1, 2005.

9 (d) The Texas State Board of Mechanical Industries may not
10 take any action and is not created until the day after the date the
11 last appointee to the initial board takes office. On the date of
12 its creation, the board assumes its functions and:

13 (1) the Air Conditioning and Refrigeration Contractors
14 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
15 irrigators advisory council are abolished;

16 (2) the obligations, rights, contracts, records and
17 other property, and personnel of, and unspent money appropriated to
18 or for, the abolished boards and council or the governing body for
19 the laws or programs transferred to the new board under this Act
20 are transferred to the Texas State Board of Mechanical Industries;

21 (3) the rules of the abolished boards and council or
22 the governing body for the laws or programs transferred to the new
23 board under this Act are continued in effect as rules of the Texas
24 State Board of Mechanical Industries until superseded by rule of
25 the new board;

26 (4) the licenses, certificates, permits, or
27 registrations in effect that were issued by the abolished boards or

1 council or the governing body for the laws or programs transferred
2 to the new board under this Act are continued in effect as
3 licenses, certificates, permits, or registrations of the Texas
4 State Board of Mechanical Industries;

5 (5) a complaint or investigation pending before the
6 abolished boards or council or the governing body for the laws or
7 programs transferred to the new board under this Act is transferred
8 without change in status to the Texas State Board of Mechanical
9 Industries;

10 (6) a contested case pending before the abolished
11 boards and council or the governing body for the laws or programs
12 transferred to the new board under this Act is transferred to the
13 Texas State Board of Mechanical Industries and actions taken in the
14 proceeding are treated as if taken by the Texas State Board of
15 Mechanical Industries; and

16 (7) any reference in a law to the abolished boards or
17 council means the Texas State Board of Mechanical Industries.

18 (e) Regardless of the changes in law made by this Act, until
19 the date that the Air Conditioning and Refrigeration Contractors
20 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
21 irrigators advisory council are abolished as provided by this
22 section, the boards and council continue in existence and shall
23 administer their functions under the law that governed the boards
24 and council before the effective date of this Act, and the prior
25 law is continued in effect for that purpose.

26 (f) The Texas State Board of Mechanical Industries shall
27 adopt rules under this Act not later than December 1, 1999.

1 SECTION 8. The following laws are repealed:

2 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
3 Law (Article 6243-101, Vernon's Texas Civil Statutes);

4 (2) Section 3A, Air Conditioning and Refrigeration
5 Contractor License Law (Article 8861, Vernon's Texas Civil
6 Statutes); and

7 (3) Section 34.003, Water Code.

8 SECTION 9. This Act takes effect September 1, 1999.

9 SECTION 10. The importance of this legislation and the
10 crowded condition of the calendars in both houses create an
11 emergency and an imperative public necessity that the
12 constitutional rule requiring bills to be read on three several
13 days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 26 1999

Butt
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY HARRIS

1 Amend C.S.H.B. 2155 by striking all below the enacting clause
2 and substituting the following:

3 SECTION 1. The Revised Statutes are amended by adding
4 Title 132B to read as follows:

5 TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

6 Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

7 Sec. 1. DEFINITION. In this article, "board" means the
8 Texas State Board of Mechanical Industries.

9 Sec. 2. BOARD. (a) The Texas State Board of Mechanical
10 Industries consists of nine members as follows:

11 (1) one member who has at least 10 years of practical
12 experience as a master plumber;

13 (2) one member who has at least 10 years of practical
14 experience as a journeyman plumber;

15 (3) one member who has at least five years of
16 experience as a plumbing contractor or as a licensed air
17 conditioning and refrigeration contractor;

18 (4) one member who has at least five years of
19 practical experience as a plumbing inspector;

20 (5) one member who has held an air conditioning and
21 refrigeration class A license or class B license for at least five
22 years;

23 (6) one member who has at least 10 years as a licensed
24 irrigation contractor; and

25 (7) three members who are representatives of the
26 public.

27 (b) Members of the board are appointed by the governor with
28 the advice and consent of the senate.

29 (c) Appointments to the board shall be made without regard

1 to the race, color, disability, sex, religion, age, or national
2 origin of the appointees.

3 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
4 shall designate a member of the board as the presiding officer of
5 the board to serve in that capacity at the will of the governor.
6 The board annually shall select an assistant presiding officer and
7 a secretary-treasurer.

8 (b) The board shall hold at least two regular meetings each
9 year. The board may not hold more than four meetings each year
10 unless at least nine members of the board request the presiding
11 officer in writing to call additional meetings.

12 (c) A member of the board is entitled to a per diem as set
13 by the General Appropriations Act for each day the member engages
14 in the business of the board. A member may not receive
15 compensation for travel expenses, including expenses for meals and
16 lodging, other than transportation expenses as provided by the
17 General Appropriations Act.

18 Sec. 4. TERMS. (a) Members of the board are appointed for
19 staggered six-year terms, with three members' terms expiring on
20 February 1 of each odd-numbered year.

21 (b) A member appointed to fill a vacancy shall hold office
22 for the remainder of that term.

23 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
24 a public member of the board if the person or the person's spouse:

25 (1) is registered, certified, or licensed by a
26 regulatory agency in the field of plumbing or mechanical work;

27 (2) is employed by or participates in the management
28 of a business entity or other organization regulated by or
29 receiving money from the board;

30 (3) owns or controls, directly or indirectly, more
31 than a 10 percent interest in a business entity or other

1 organization regulated by or receiving money from the board; or

2 (4) uses or receives a substantial amount of tangible
3 goods, services, or money from the board other than compensation or
4 reimbursement authorized by law for board membership, attendance,
5 or expenses.

6 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this
7 section, "Texas trade association" means a cooperative and
8 voluntarily joined association of business or professional
9 competitors in this state designed to assist its members and its
10 industry or profession in dealing with mutual business or
11 professional problems and in promoting their common interest.

12 (b) A person may not be a member of the board and may not be
13 a board employee employed in a "bona fide executive,
14 administrative, or professional capacity," as that phrase is used
15 for purposes of establishing an exemption to the overtime
16 provisions of the federal Fair Labor Standards Act of 1938 (29
17 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

18 (1) the person is an officer, employee, or paid
19 consultant of a Texas trade association in the field of plumbing or
20 mechanical work; or

21 (2) the person's spouse is an officer, manager, or
22 paid consultant of a Texas trade association in the field of
23 plumbing or mechanical work.

24 (c) A person may not be a member of the board or act as the
25 general counsel to the board if the person is required to register
26 as a lobbyist under Chapter 305, Government Code, because of the
27 person's activities for compensation on behalf of a profession
28 related to the operation of the board.

29 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
30 as a member of the board or act as the general counsel to the board
31 if the person is required to register as a lobbyist under Chapter

1 305, Government Code, because of the person's activities for
2 compensation on behalf of a profession related to the operation of
3 the board.

4 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
5 for removal from the board that a member:

6 (1) does not have at the time of taking office the
7 qualifications required by Section 2 of this article;

8 (2) does not maintain during service on the board the
9 qualifications required by Section 2 of this article;

10 (3) is ineligible for membership under Section 5, 6,
11 or 7 of this article;

12 (4) cannot, because of illness or disability,
13 discharge the member's duties for a substantial part of the
14 member's term; or

15 (5) is absent from more than half of the regularly
16 scheduled board meetings that the member is eligible to attend
17 during a calendar year without an excuse approved by a majority
18 vote of the board.

19 (b) The validity of an action of the board is not affected
20 by the fact that it is taken when a ground for removal of a board
21 member exists.

22 (c) If the executive director has knowledge that a potential
23 ground for removal exists, the executive director shall notify the
24 presiding officer of the board of the potential ground. The
25 presiding officer shall then notify the governor and the attorney
26 general that a potential ground for removal exists. If the
27 potential ground for removal involves the presiding officer, the
28 executive director shall notify the next highest ranking officer of
29 the board, who shall then notify the governor and the attorney
30 general that a potential ground for removal exists.

31 Sec. 9. STAFF. (a) The board shall employ an executive

1 director and administrative and clerical employees as necessary to
2 carry out the board's functions.

3 (b) The board shall develop and implement policies that
4 clearly separate the policymaking responsibilities of the board and
5 the management responsibilities of the executive director and staff
6 of the board.

7 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall
8 administer and enforce:

9 (1) The Plumbing License Law (Article 6243-101,
10 Vernon's Texas Civil Statutes);

11 (2) the law regulating environmental performance
12 standards for plumbing fixtures, Chapter 372, Health and Safety
13 Code;

14 (3) the Air Conditioning and Refrigeration Contractor
15 License Law (Article 8861, Vernon's Texas Civil Statutes);

16 (4) the law regulating irrigators, Chapter 34, Water
17 Code; and

18 (5) the law regulating certain connections to public
19 drinking water, Section 341.033(f), Health and Safety Code.

20 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
21 a separate advisory committee on each of the following:

22 (1) plumbing;

23 (2) irrigation;

24 (3) air conditioning and refrigeration; and

25 (4) backflow prevention.

26 (b) The board may appoint additional advisory committees as
27 determined to be necessary by a majority of the board.

28 (c) A member of an advisory committee appointed under this
29 section serves a two-year term. An advisory committee member is
30 not entitled to compensation but is entitled to reimbursement for
31 actual and necessary expenses, including travel expenses, incurred

1 in performing duties as a member of the advisory committee.

2 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
3 separate licenses, certificates, permits, or registrations for the
4 programs under Section 10 of this article in which a license,
5 certificate, permit, or registration is issued by the board.

6 (b) The board may issue more than one type of license,
7 certificate, permit, or registration to a person under a law
8 regulated by the board if the person is qualified to hold each of
9 the licenses, certificates, permits, or registrations issued. The
10 board shall adopt rules relating to the issuance of multiple
11 licenses, certificates, permits, or registrations to a person under
12 laws administered by the board.

13 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
14 from funds appropriated to it, all necessary disbursements to carry
15 out this article and the laws and programs listed in Section 10 of
16 this article.

17 (b) The financial transactions of the board are subject to
18 audit by the state auditor in accordance with Chapter 321,
19 Government Code.

20 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
21 annually with the governor and the presiding officer of each house
22 of the legislature a complete and detailed written report
23 accounting for all funds received and disbursed by the board during
24 the preceding fiscal year. The annual report must be in the form
25 and reported in the time provided by the General Appropriations
26 Act.

27 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
28 the executive director's designee shall develop an intra-agency
29 career ladder program. The program shall require intra-agency
30 posting of all nonentry level positions concurrently with any
31 public posting.

1 (b) The executive director or the executive director's
2 designee shall develop a system of annual performance evaluations
3 based on measurable job tasks. All merit pay for board employees
4 must be based on the system established under this subsection.

5 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
6 executive director or the executive director's designee shall
7 prepare and maintain a written policy statement that implements a
8 program of equal employment opportunity to ensure that all
9 personnel decisions are made without regard to race, color,
10 disability, sex, religion, age, or national origin.

11 (b) The policy statement must include:

12 (1) personnel policies, including policies relating to
13 recruitment, evaluation, selection, training, and promotion of
14 personnel, that show the intent of the board to avoid the unlawful
15 employment practices described by Chapter 21, Labor Code; and

16 (2) an analysis of the extent to which the composition
17 of the board's personnel is in accordance with state and federal
18 law and a description of reasonable methods to achieve compliance
19 with state and federal law.

20 (c) The policy statement must:

21 (1) be updated annually;

22 (2) be reviewed by the state Commission on Human
23 Rights for compliance with Subsection (b)(1); and

24 (3) be filed with the governor's office.

25 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
26 prepare information of public interest describing the functions of
27 the board and the board's procedures by which complaints are filed
28 with and resolved by the board. The board shall make the
29 information available to the public and appropriate state agencies.

30 (b) The board by rule shall establish methods by which
31 consumers and service recipients are notified of the name, mailing

1 address, and telephone number of the board and the license number
2 of the responsible licensee for the purpose of directing complaints
3 to the board. The board or the responsible licensee, as
4 appropriate, shall provide for that notification:

5 (1) on each registration form, application, or written
6 contract for services of an individual or entity regulated by the
7 board;

8 (2) on a sign prominently displayed in the place of
9 business of each individual or entity regulated by the board;

10 (3) in a bill for service provided by an individual or
11 entity regulated by the board; and

12 (4) the company name and license number of the
13 responsible licensee shall be displayed on both sides of all
14 vehicles used in conjunction with contracting or performing work
15 regulated by the board.

16 (c) The board shall list along with its regular telephone
17 number the toll-free telephone number that may be called to present
18 a complaint about a health professional if the toll-free number is
19 established under other state law.

20 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
21 shall develop and implement policies that provide the public with a
22 reasonable opportunity to appear before the board and to speak on
23 any issue under the jurisdiction of the board.

24 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
25 maintain a written plan that describes how a person who does not
26 speak English can be provided reasonable access to the board's
27 programs. The board shall also comply with federal and state laws
28 for program and facility accessibility.

29 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
30 INFORMATION. (a) A person who is appointed to and qualifies for
31 office as a member of the board may not vote, deliberate, or be

1 counted as a member in attendance at a meeting of the board until
2 the person completes a training program that complies with this
3 section.

4 (b) The training program must provide the person with
5 information regarding:

6 (1) this article and the statutes enforced by the
7 board;

8 (2) the programs operated by the board;

9 (3) the role and functions of the board;

10 (4) the rules of the board with an emphasis on the
11 rules that relate to disciplinary and investigatory authority;

12 (5) the current budget for the board;

13 (6) the results of the most recent formal audit of the
14 board;

15 (7) the requirements of:

16 (A) the open meetings law, Chapter 551,
17 Government Code;

18 (B) the public information law, Chapter 552,
19 Government Code;

20 (C) the administrative procedure law, Chapter
21 2001, Government Code; and

22 (D) other laws relating to public officials,
23 including conflict-of-interest laws; and

24 (8) any applicable ethics policies adopted by the
25 board or the Texas Ethics Commission.

26 (c) A person appointed to the board is entitled to
27 reimbursement, as provided by the General Appropriations Act, for
28 the travel expenses incurred in attending the training program
29 regardless of whether the attendance at the program occurs before
30 or after the person qualifies for office.

31 (d) The executive director or the executive director's

1 designee shall provide to members of the board and to board
2 employees, as often as necessary, information regarding the
3 requirements for office or employment under this article, including
4 information regarding a person's responsibilities under applicable
5 laws relating to standards of conduct for state officers or
6 employees.

7 Sec. 21. SUNSET PROVISION. The Texas State Board of
8 Mechanical Industries is subject to Chapter 325, Government Code
9 (Texas Sunset Act). Unless continued in existence as provided by
10 that chapter, the board is abolished and this article expires
11 September 1, 2011.

12 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
13 a license, endorsement, certification, or registration, probate a
14 license, endorsement, certification, or registration suspension, or
15 reprimand any person or entity regulated by the board for any
16 violation of this article or any regulatory statute administered by
17 the board or any rule adopted under this article or any rule
18 adopted under any regulatory statute administered by the board. A
19 violation of this article shall include but not be limited to:
20 obtaining a license through error or fraud; having recklessly,
21 wilfully, negligently, or arbitrarily violated municipal or other
22 political subdivision rules or ordinances regulating any work
23 governed by the board; making a substantial misrepresentation of
24 services to be provided or which have been provided; making any
25 false promise with intent to influence, persuade, or induce an
26 individual to contract for services. Grounds for suspension or
27 revocation of a license, endorsement, certification, or
28 registration due to suspected incompetence or wilful violation by a
29 licensee may be determined through retesting procedures.

30 (b) The board may assess an administrative penalty against a
31 person or entity who violates a provision of this article, a law

1 administered by the board, or a rule or order adopted by the board
2 as provided by this section.

3 (c) The penalty for each violation may be in an amount not
4 to exceed \$1,000. Each day a violation continues or occurs may be
5 considered a separate violation for purposes of penalty assessment.
6 In determining the amount of the penalty, the board shall consider:

7 (1) the seriousness of the violation, including the
8 nature, circumstances, extent, and gravity of the prohibited acts
9 and the hazard or potential hazard posed to the health or safety of
10 the public;

11 (2) the economic damage to property or the environment
12 caused by the violation;

13 (3) the history of previous violations;

14 (4) the amount necessary to deter future violations;

15 (5) efforts to correct the violation; and

16 (6) any other matter that justice may require.

17 (d) If the board proposes to assess an administrative
18 penalty, refuse a person's application for licensure, endorsement,
19 certification, or registration, or suspend or revoke a person's
20 license, endorsement, certification, or registration, the person is
21 entitled to a hearing, if requested, governed by the Administrative
22 Procedure Act, Chapter 2001, Government Code.

23 (e) The executive director or the executive director's staff
24 designee or staff designees shall oversee and conduct
25 investigations, conduct informal conferences, negotiate agreed
26 final orders, draft formal complaints, recommend administrative
27 penalties, and pursue cases involving violations of this article or
28 any regulatory statute administered by the board or any rule
29 adopted under this article or any rule adopted under any regulatory
30 statute administered by the board at the State Office of
31 Administrative Hearings. Proceedings for assessing administrative

1 penalties or for the refusal, suspension, or revocation of a
2 license, endorsement, certification, or registration are subject to
3 the Administrative Procedure Act, Chapter 2001, Government Code.

4 (f) Within the 30-day period immediately following the day
5 on which a board order assessing an administrative penalty to a
6 person or entity becomes final as provided by Section 2001.144,
7 Government Code, the person or entity charged with the penalty
8 shall:

9 (1) pay the penalty in full; or

10 (2) if the person files a petition for judicial review
11 contesting either the fact of the violation or the amount of the
12 penalty or contesting both the fact of the violation and the amount
13 of the penalty:

14 (A) forward the amount to the board for
15 placement in an escrow account; or

16 (B) in lieu of payment into escrow, post with
17 the board a supersedeas bond in a form approved by the board for
18 the amount of the penalty, the bond to be effective until all
19 judicial review of the order or decision is final.

20 (g) If a person charged is financially unable to either
21 forward the amount of the penalty for placement in an escrow
22 account or post a supersedeas bond for the amount of the penalty,
23 the person may satisfy the requirements of Subsection (f)(2) of
24 this section by filing with the board an affidavit sworn by the
25 person charged, stating that the person is financially unable to
26 either forward the amount of the penalty or post a bond.

27 (h) If the person charged fails to pay the penalty in full
28 as provided under Subsection (f)(1) of this section or forward the
29 money, post the bond, or file the affidavit as provided by
30 Subsection (f) or (g) of this section, the board may forward the
31 matter to the attorney general for enforcement.

1 (i) Judicial review of the order or decision of the board
2 assessing the penalty shall be under the substantial evidence rule
3 and shall be instituted by filing a petition with a district court
4 in Travis County, as provided by Subchapter G, Chapter 2001,
5 Government Code.

6 (j) If the penalty is reduced or not assessed by the court,
7 the board shall remit to the person charged the appropriate amount
8 plus accrued interest if the penalty has been paid or shall execute
9 a release of the bond if a supersedeas bond has been posted. The
10 accrued interest on amounts remitted by the board under this
11 subsection shall be paid at a rate equal to the rate charged on
12 loans to depository institutions by the New York Federal Reserve
13 Bank and shall be paid for the period beginning on the date the
14 penalty is paid to the board under Subsection (f) of this section
15 and ending on the date the penalty is remitted.

16 (k) An administrative penalty collected under Subsection (b)
17 of this section shall be deposited in the general revenue fund.

18 (l) A person commits an offense if the person violates this
19 article or any regulatory statute administered by the board or any
20 rule adopted under this article or any rule adopted under any
21 regulatory statute administered by the board, engages in activities
22 for which a license, endorsement, certification, or registration is
23 required without a license, endorsement, certification, or
24 registration issued under this article, or employs or utilizes an
25 unlicensed, unendorsed, uncertified, or unregistered person to
26 engage in activities for which a license, endorsement,
27 certification, or registration is required by this article. An
28 offense under this subsection is a Class C misdemeanor.

29 (m) A field representative of the board or, within the
30 jurisdiction of that municipality or water district, a municipal
31 inspector or water district inspector or other inspector authorized

1 to inspect work regulated by the board, may issue citations to
2 persons who engage in conduct described by Subsection (1) of this
3 section.

4 (n) Citations issued under Subsection (1) and Subsection (m)
5 of this section may be filed in a county justice court or municipal
6 court for adjudication of the offense or offenses.

7 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
8 adopt rules for a law or program regulated by the board as
9 necessary to comply with any federal regulation that imposes
10 standards or requirements on that law or program.

11 SECTION 2. The Plumbing License Law (Article 6243-101,
12 Vernon's Texas Civil Statutes) is amended by adding Section 1A and
13 amending Section 3A to read as follows:

14 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
15 Act is administered by the Texas State Board of Mechanical
16 Industries in accordance with Article 9150, Revised Statutes. To
17 the extent of a conflict between this Act and Article 9150, Revised
18 Statutes, that article prevails.

19 (b) Any reference in this Act to the Texas State Board of
20 Plumbing Examiners means the Texas State Board of Mechanical
21 Industries.

22 (c) The Texas State Board of Plumbing Examiners is abolished
23 and the functions of that board are exercised by the Texas State
24 Board of Mechanical Industries.

25 Sec. 3A. CERTIFICATION RELATING TO RESIDENTIAL WATER
26 TREATMENT FACILITIES. (a) The executive director of the Texas
27 State Board of Mechanical Industries or the executive director's
28 [Commissioner-of-Health-or-his] designee shall certify persons as
29 being qualified for the installation, exchange, servicing, and
30 repair of residential water treatment facilities [as--defined--by
31 Subsection-(g)-of-Section-2-of-this-Act]. The Texas State Board of

1 Mechanical Industries [~~Board--of--Health~~] shall set standards for
2 certification to ensure the public health and to protect the public
3 from unqualified persons engaging in activities relating to water
4 treatment. Nothing in this section shall be construed to require
5 that persons licensed pursuant to this Act are subject to
6 certification under this section.

7 (b) [~~Before--a--certificate--is--issued--or--renewed--under--this~~
8 ~~section,--an--applicant--or--holder--of--a--certificate--shall--be--required~~
9 ~~to--pay--a--fee--of--\$10--a--year.~~] On receipt of the required fee, the
10 Texas State Board of Mechanical Industries [~~Department--of--Health~~]
11 shall issue to a qualified person a certificate stating that the
12 person is qualified for the installation, exchange, servicing, and
13 repair of residential water treatment facilities. The Texas State
14 Board of Mechanical Industries [~~Board-of-Health~~] shall adopt rules
15 establishing classes of certificates, duration of certificates, and
16 fees.

17 (c) All fees received by the Texas State Board of Mechanical
18 Industries [~~Department--of--Health~~] under this section shall be
19 deposited in the State Treasury to the credit of the General
20 Revenue Fund.

21 SECTION 3. The Air Conditioning and Refrigeration Contractor
22 License Law (Article 8861, Vernon's Texas Civil Statutes) is
23 amended by adding Section 1A to read as follows:

24 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

25 (a) This Act is administered by the Texas State Board of
26 Mechanical Industries in accordance with Article 9150, Revised
27 Statutes. To the extent of a conflict between this Act and Article
28 9150, Revised Statutes, that article prevails.

29 (b) Any reference in this Act to the Texas Department of
30 Licensing and Regulation, the commissioner of licensing and
31 regulation, or the Air Conditioning and Refrigeration Contractors

1 Advisory Board means the Texas State Board of Mechanical
2 Industries.

3 (c) The Air Conditioning and Refrigeration Contractors
4 Advisory Board is abolished and the functions of that board and the
5 functions, under this Act, of the Texas Department of Licensing and
6 Regulation and the commissioner of licensing and regulation are
7 exercised by the Texas State Board of Mechanical Industries.

8 SECTION 4. Section 341.033(f), Health and Safety Code, is
9 amended to read as follows:

10 (f) A public drinking water supply may not be connected to a
11 sprinkling, condensing, cooling, plumbing, or other system unless
12 the connection is designed to ensure against a backflow or
13 siphonage of sewage or contaminated water into the drinking water
14 supply. Notwithstanding any other provision of this chapter, this
15 subsection is administered by the Texas State Board of Mechanical
16 Industries in accordance with Article 9150, Revised Statutes. To
17 the extent of a conflict between this chapter and Article 9150,
18 Revised Statutes, regarding the administration of this subsection,
19 Article 9150 prevails. Any reference in this chapter to the Texas
20 Natural Resource Conservation Commission, as it applies to this
21 subsection, means the Texas State Board of Mechanical Industries.

22 SECTION 5. Chapter 372, Health and Safety Code, is amended
23 by adding Section 372.0015 to read as follows:

24 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
25 administered by the Texas State Board of Mechanical Industries in
26 accordance with Article 9150, Revised Statutes. To the extent of a
27 conflict between this chapter and Article 9150, Revised Statutes,
28 that article prevails.

29 (b) Any reference in this chapter to the Texas Natural
30 Resource Conservation Commission means the Texas State Board of
31 Mechanical Industries.

1 SECTION 6. Chapter 34, Water Code, is amended by adding
2 Section 34.0015 to read as follows:

3 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.

4 (a) This chapter is administered by the Texas State Board of
5 Mechanical Industries in accordance with Article 9150, Revised
6 Statutes. To the extent of a conflict between this chapter and
7 Article 9150, Revised Statutes, that article prevails.

8 (b) Any reference in this chapter to the Texas Natural
9 Resource Conservation Commission or the Texas irrigators advisory
10 council means the Texas State Board of Mechanical Industries.

11 (c) The Texas irrigators advisory council is abolished and
12 the functions of that board and the functions, under this chapter,
13 of the Texas Natural Resource Conservation Commission are exercised
14 by the Texas State Board of Mechanical Industries.

15 SECTION 7. (a) As soon as possible after the effective date
16 of this Act, the governor shall appoint the initial members of the
17 Texas State Board of Mechanical Industries in accordance with
18 Article 9150, Revised Statutes, as added by this Act.

19 (b) A person who is serving on the day immediately before
20 the effective date of this Act as a member of the governing body of
21 an agency abolished by this Act is eligible for appointment to the
22 Texas State Board of Mechanical Industries if the person meets the
23 requirements set forth in Section 2, Article 9150, Revised
24 Statutes, as added by this Act.

25 (c) In making the initial appointments, the governor shall
26 designate members to serve terms as follows:

27 (1) three members to serve for terms expiring February
28 1, 2001;

29 (2) three members to serve for terms expiring February
30 1, 2003; and

31 (3) three members to serve for terms expiring February

1 1, 2005.

2 (d) The Texas State Board of Mechanical Industries may not
3 take any action and is not created until the day after the date the
4 last appointee to the initial board takes office. On the date of
5 its creation, the board assumes its functions and:

6 (1) the Air Conditioning and Refrigeration Contractors
7 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
8 irrigators advisory council are abolished;

9 (2) the obligations, rights, contracts, records and
10 other property, and personnel of, and unspent money appropriated to
11 or for, the abolished boards and council or the governing body for
12 the laws or programs transferred to the new board under this Act
13 are transferred to the Texas State Board of Mechanical Industries;

14 (3) the rules of the abolished boards and council or
15 the governing body for the laws or programs transferred to the new
16 board under this Act are continued in effect as rules of the Texas
17 State Board of Mechanical Industries until superseded by rule of
18 the new board;

19 (4) the licenses, certificates, permits, or
20 registrations in effect that were issued by the abolished boards or
21 council or the governing body for the laws or programs transferred
22 to the new board under this Act are continued in effect as
23 licenses, certificates, permits, or registrations of the Texas
24 State Board of Mechanical Industries;

25 (5) a complaint or investigation pending before the
26 abolished boards or council or the governing body for the laws or
27 programs transferred to the new board under this Act is transferred
28 without change in status to the Texas State Board of Mechanical
29 Industries;

30 (6) a contested case pending before the abolished
31 boards and council or the governing body for the laws or programs

1 transferred to the new board under this Act is transferred to the
2 Texas State Board of Mechanical Industries and actions taken in the
3 proceeding are treated as if taken by the Texas State Board of
4 Mechanical Industries; and

5 (7) any reference in a law to the abolished boards or
6 council means the Texas State Board of Mechanical Industries.

7 (e) Regardless of the changes in law made by this Act, until
8 the date that the Air Conditioning and Refrigeration Contractors
9 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
10 irrigators advisory council are abolished as provided by this
11 section, the boards and council continue in existence and shall
12 administer their functions under the law that governed the boards
13 and council before the effective date of this Act, and the prior
14 law is continued in effect for that purpose.

15 (f) The Texas State Board of Mechanical Industries shall
16 adopt rules under this Act not later than December 1, 1999.

17 SECTION 8. The following laws are repealed:

18 (1) Sections 3(b), 4, 4a, 5A, 6, and 7, The Plumbing
19 License Law (Article 6243-101, Vernon's Texas Civil Statutes);

20 (2) Section 3A, Air Conditioning and Refrigeration
21 Contractor License Law (Article 8861, Vernon's Texas Civil
22 Statutes); and

23 (3) Section 34.003, Water Code.

24 SECTION 9. This Act takes effect September 1, 1999.

25 SECTION 10. The importance of this legislation and the
26 crowded condition of the calendars in both houses create an
27 emergency and an imperative public necessity that the
28 constitutional rule requiring bills to be read on three several
29 days in each house be suspended, and this rule is hereby suspended.

ADOPTED

MAY 26 1999

Shirley Long
Secretary of the Senate

FLOOR AMENDMENT NO. 2

BY Harris

- 1 Amend Floor Amendment No. 1 to H.B. 2155, SECTION 8(1) by
- 2 striking "3(b)"

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

May 12, 1999

TO: Chris Harris, Chair, Senate, Committee on State Affairs

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2155** by Yarbrough (relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would create the "Texas State Board of Mechanical Industries", and would shift regulatory responsibilities for several programs to the new agency. All functions of the Texas State Board of Plumbing Examiners (TSBPE) would be transferred to the new agency, and the TSBPE would be abolished. Regulatory responsibilities for air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Two advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board and the Texas Irrigators Advisory Council. New advisory committees would be created on each of the following: plumbing; irrigation; air conditioning and refrigeration; and backflow prevention.

It is assumed that resources could be transferred between affected agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, BB, SD, TH, CB

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 76th Regular Session

April 21, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: HB2155 by Yarbrough (relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would create the "Texas State Board of Mechanical Industries", and would shift regulatory responsibilities for several programs to the new agency. All functions of the Texas State Board of Plumbing Examiners (TSBPE) would be transferred to the new agency, and the TSBPE would be abolished. Regulatory responsibilities for air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Two advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board and the Texas Irrigators Advisory Council. New advisory committees would be created on each of the following: plumbing; irrigation; air conditioning and refrigeration; and backflow prevention.

It is assumed that resources could be transferred between affected agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies:

LBB Staff: JK, TH, CB

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 76th Regular Session

March 29, 1999

TO: Honorable Ron Wilson, Chair, House Committee on Licensing & Administrative Procedures

FROM: John Keel, Director, Legislative Budget Board

IN RE: **HB2155** by Yarbrough (Relating to the creation and operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.), **As Introduced**

No significant fiscal implication to the State is anticipated.
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The bill would re-create the Texas State Board of Plumbing Examiners as the "Texas Board of Plumbing and Mechanical Work", and would shift regulatory responsibilities for several programs to the new agency. Regulatory responsibilities for boilers and air conditioning and refrigeration contractors would be transferred from the Texas Department of Licensing and Regulation, and responsibility for the regulation of irrigators would be transferred from the Texas Natural Resources Conservation Commission. Several advisory committees would be abolished, including the Air Conditioning and Refrigeration Contractors Advisory Board, the Board of Boiler Rules, and the Texas Irrigators Advisory Council.

It is assumed that resources could be shifted between agencies as necessary to implement the provisions of the bill.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 452 Department of Licensing and Regulation, 456 Board of Plumbing Examiners, 344 Commission on Human Rights, 582 Natural Resource Conservation Commission

LBB Staff: JK, TH, CB

ENROLLED

H.B. No. 2155

AN ACT

relating to the creation and operation of the Texas State Board of Mechanical Industries and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Revised Statutes are amended by adding Title 132B to read as follows:

TITLE 132B. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Art. 9150. TEXAS STATE BOARD OF MECHANICAL INDUSTRIES

Sec. 1. DEFINITION. In this article, "board" means the Texas State Board of Mechanical Industries.

Sec. 2. BOARD. (a) The Texas State Board of Mechanical Industries consists of nine members as follows:

(1) one member who has at least 10 years of practical experience as a master plumber;

(2) one member who has at least 10 years of practical experience as a journeyman plumber;

(3) one member who has at least five years of experience as a plumbing contractor or as a licensed air conditioning and refrigeration contractor;

(4) one member who has at least five years of practical experience as a plumbing inspector;

(5) one member who has held an air conditioning and refrigeration class A license or class B license for at least five

1 years;

2 (6) one member who has at least 10 years as a licensed
3 irrigation contractor; and

4 (7) three members who are representatives of the
5 public.

6 (b) Members of the board are appointed by the governor with
7 the advice and consent of the senate.

8 (c) Appointments to the board shall be made without regard
9 to the race, color, disability, sex, religion, age, or national
10 origin of the appointees.

11 Sec. 3. OFFICERS; MEETINGS; COMPENSATION. (a) The governor
12 shall designate a member of the board as the presiding officer of
13 the board to serve in that capacity at the will of the governor.
14 The board annually shall select an assistant presiding officer and
15 a secretary-treasurer.

16 (b) The board shall hold at least two regular meetings each
17 year. The board may not hold more than four meetings each year
18 unless at least nine members of the board request the presiding
19 officer in writing to call additional meetings.

20 (c) A member of the board is entitled to a per diem as set
21 by the General Appropriations Act for each day the member engages
22 in the business of the board. A member may not receive
23 compensation for travel expenses, including expenses for meals and
24 lodging, other than transportation expenses as provided by the
25 General Appropriations Act.

26 Sec. 4. TERMS. (a) Members of the board are appointed for
27 staggered six-year terms, with three members' terms expiring on

1 February 1 of each odd-numbered year.

2 (b) A member appointed to fill a vacancy shall hold office
3 for the remainder of that term.

4 Sec. 5. PUBLIC MEMBERSHIP RESTRICTION. A person may not be
5 a public member of the board if the person or the person's spouse:

6 (1) is registered, certified, or licensed by a
7 regulatory agency in the field of plumbing or mechanical work;

8 (2) is employed by or participates in the management
9 of a business entity or other organization regulated by or
10 receiving money from the board;

11 (3) owns or controls, directly or indirectly, more
12 than a 10 percent interest in a business entity or other
13 organization regulated by or receiving money from the board; or

14 (4) uses or receives a substantial amount of tangible
15 goods, services, or money from the board other than compensation or
16 reimbursement authorized by law for board membership, attendance,
17 or expenses.

18 Sec. 6. CONFLICT OF INTEREST RESTRICTIONS. (a) In this
19 section, "Texas trade association" means a cooperative and
20 voluntarily joined association of business or professional
21 competitors in this state designed to assist its members and its
22 industry or profession in dealing with mutual business or
23 professional problems and in promoting their common interest.

24 (b) A person may not be a member of the board and may not be
25 a board employee employed in a "bona fide executive,
26 administrative, or professional capacity," as that phrase is used
27 for purposes of establishing an exemption to the overtime

1 provisions of the federal Fair Labor Standards Act of 1938 (29
2 U.S.C. Section 201 et seq.) and its subsequent amendments, if:

3 (1) the person is an officer, employee, or paid
4 consultant of a Texas trade association in the field of plumbing or
5 mechanical work; or

6 (2) the person's spouse is an officer, manager, or
7 paid consultant of a Texas trade association in the field of
8 plumbing or mechanical work.

9 (c) A person may not be a member of the board or act as the
10 general counsel to the board if the person is required to register
11 as a lobbyist under Chapter 305, Government Code, because of the
12 person's activities for compensation on behalf of a profession
13 related to the operation of the board.

14 Sec. 7. EFFECT OF LOBBYING ACTIVITY. A person may not serve
15 as a member of the board or act as the general counsel to the board
16 if the person is required to register as a lobbyist under Chapter
17 305, Government Code, because of the person's activities for
18 compensation on behalf of a profession related to the operation of
19 the board.

20 Sec. 8. GROUNDS FOR REMOVAL FROM BOARD. (a) It is a ground
21 for removal from the board that a member:

22 (1) does not have at the time of taking office the
23 qualifications required by Section 2 of this article;

24 (2) does not maintain during service on the board the
25 qualifications required by Section 2 of this article;

26 (3) is ineligible for membership under Section 5, 6,
27 or 7 of this article;

1 (4) cannot, because of illness or disability,
2 discharge the member's duties for a substantial part of the
3 member's term; or

4 (5) is absent from more than half of the regularly
5 scheduled board meetings that the member is eligible to attend
6 during a calendar year without an excuse approved by a majority
7 vote of the board.

8 (b) The validity of an action of the board is not affected
9 by the fact that it is taken when a ground for removal of a board
10 member exists.

11 (c) If the executive director has knowledge that a potential
12 ground for removal exists, the executive director shall notify the
13 presiding officer of the board of the potential ground. The
14 presiding officer shall then notify the governor and the attorney
15 general that a potential ground for removal exists. If the
16 potential ground for removal involves the presiding officer, the
17 executive director shall notify the next highest ranking officer of
18 the board, who shall then notify the governor and the attorney
19 general that a potential ground for removal exists.

20 Sec. 9. STAFF. (a) The board shall employ an executive
21 director and administrative and clerical employees as necessary to
22 carry out the board's functions.

23 (b) The board shall develop and implement policies that
24 clearly separate the policymaking responsibilities of the board and
25 the management responsibilities of the executive director and staff
26 of the board.

27 Sec. 10. REGULATORY STATUTES ADMINISTERED. The board shall

1 administer and enforce:

2 (1) The Plumbing License Law (Article 6243-101,
3 Vernon's Texas Civil Statutes);

4 (2) the law regulating environmental performance
5 standards for plumbing fixtures, Chapter 372, Health and Safety
6 Code;

7 (3) the Air Conditioning and Refrigeration Contractor
8 License Law (Article 8861, Vernon's Texas Civil Statutes);

9 (4) the law regulating irrigators, Chapter 34, Water
10 Code; and

11 (5) the law regulating certain connections to public
12 drinking water, Section 341.033(f), Health and Safety Code.

13 Sec. 11. ADVISORY COMMITTEES. (a) The board shall appoint
14 a separate advisory committee on each of the following:

15 (1) plumbing;

16 (2) irrigation;

17 (3) air conditioning and refrigeration; and

18 (4) backflow prevention.

19 (b) The board may appoint additional advisory committees as
20 determined to be necessary by a majority of the board.

21 (c) A member of an advisory committee appointed under this
22 section serves a two-year term. An advisory committee member is
23 not entitled to compensation but is entitled to reimbursement for
24 actual and necessary expenses, including travel expenses, incurred
25 in performing duties as a member of the advisory committee.

26 Sec. 12. SEPARATE LICENSES. (a) The board shall issue
27 separate licenses, certificates, permits, or registrations for the

1 programs under Section 10 of this article in which a license,
2 certificate, permit, or registration is issued by the board.

3 (b) The board may issue more than one type of license,
4 certificate, permit, or registration to a person under a law
5 regulated by the board if the person is qualified to hold each of
6 the licenses, certificates, permits, or registrations issued. The
7 board shall adopt rules relating to the issuance of multiple
8 licenses, certificates, permits, or registrations to a person under
9 laws administered by the board.

10 Sec. 13. EXPENDITURES; AUDIT. (a) The board may authorize,
11 from funds appropriated to it, all necessary disbursements to carry
12 out this article and the laws and programs listed in Section 10 of
13 this article.

14 (b) The financial transactions of the board are subject to
15 audit by the state auditor in accordance with Chapter 321,
16 Government Code.

17 Sec. 14. ANNUAL FINANCIAL REPORT. The board shall file
18 annually with the governor and the presiding officer of each house
19 of the legislature a complete and detailed written report
20 accounting for all funds received and disbursed by the board during
21 the preceding fiscal year. The annual report must be in the form
22 and reported in the time provided by the General Appropriations
23 Act.

24 Sec. 15. PERSONNEL POLICIES. (a) The executive director or
25 the executive director's designee shall develop an intra-agency
26 career ladder program. The program shall require intra-agency
27 posting of all nonentry level positions concurrently with any

1 public posting.

2 (b) The executive director or the executive director's
3 designee shall develop a system of annual performance evaluations
4 based on measurable job tasks. All merit pay for board employees
5 must be based on the system established under this subsection.

6 Sec. 16. EQUAL EMPLOYMENT OPPORTUNITY POLICIES. (a) The
7 executive director or the executive director's designee shall
8 prepare and maintain a written policy statement that implements a
9 program of equal employment opportunity to ensure that all
10 personnel decisions are made without regard to race, color,
11 disability, sex, religion, age, or national origin.

12 (b) The policy statement must include:

13 (1) personnel policies, including policies relating to
14 recruitment, evaluation, selection, training, and promotion of
15 personnel, that show the intent of the board to avoid the unlawful
16 employment practices described by Chapter 21, Labor Code; and

17 (2) an analysis of the extent to which the composition
18 of the board's personnel is in accordance with state and federal
19 law and a description of reasonable methods to achieve compliance
20 with state and federal law.

21 (c) The policy statement must:

22 (1) be updated annually;

23 (2) be reviewed by the state Commission on Human
24 Rights for compliance with Subsection (b)(1); and

25 (3) be filed with the governor's office.

26 Sec. 17. PUBLIC INTEREST INFORMATION. (a) The board shall
27 prepare information of public interest describing the functions of

1 the board and the board's procedures by which complaints are filed
2 with and resolved by the board. The board shall make the
3 information available to the public and appropriate state agencies.

4 (b) The board by rule shall establish methods by which
5 consumers and service recipients are notified of the name, mailing
6 address, and telephone number of the board and the license number
7 of the responsible licensee for the purpose of directing complaints
8 to the board. The board or the responsible licensee, as
9 appropriate, shall provide for that notification:

10 (1) on each registration form, application, or written
11 contract for services of an individual or entity regulated by the
12 board;

13 (2) on a sign prominently displayed in the place of
14 business of each individual or entity regulated by the board;

15 (3) in a bill for service provided by an individual or
16 entity regulated by the board; and

17 (4) the company name and license number of the
18 responsible licensee shall be displayed on both sides of all
19 vehicles used in conjunction with contracting or performing work
20 regulated by the board.

21 (c) The board shall list along with its regular telephone
22 number the toll-free telephone number that may be called to present
23 a complaint about a health professional if the toll-free number is
24 established under other state law.

25 Sec. 18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board
26 shall develop and implement policies that provide the public with a
27 reasonable opportunity to appear before the board and to speak on

1 any issue under the jurisdiction of the board.

2 Sec. 19. PROGRAM ACCESSIBILITY. The board shall prepare and
3 maintain a written plan that describes how a person who does not
4 speak English can be provided reasonable access to the board's
5 programs. The board shall also comply with federal and state laws
6 for program and facility accessibility.

7 Sec. 20. BOARD MEMBER TRAINING; STANDARDS OF CONDUCT
8 INFORMATION. (a) A person who is appointed to and qualifies for
9 office as a member of the board may not vote, deliberate, or be
10 counted as a member in attendance at a meeting of the board until
11 the person completes a training program that complies with this
12 section.

13 (b) The training program must provide the person with
14 information regarding:

15 (1) this article and the statutes enforced by the
16 board;

17 (2) the programs operated by the board;

18 (3) the role and functions of the board;

19 (4) the rules of the board with an emphasis on the
20 rules that relate to disciplinary and investigatory authority;

21 (5) the current budget for the board;

22 (6) the results of the most recent formal audit of the
23 board;

24 (7) the requirements of:

25 (A) the open meetings law, Chapter 551,
26 Government Code;

27 (B) the public information law, Chapter 552,

1 Government Code;

2 (C) the administrative procedure law, Chapter
3 2001, Government Code; and

4 (D) other laws relating to public officials,
5 including conflict-of-interest laws; and

6 (8) any applicable ethics policies adopted by the
7 board or the Texas Ethics Commission.

8 (c) A person appointed to the board is entitled to
9 reimbursement, as provided by the General Appropriations Act, for
10 the travel expenses incurred in attending the training program
11 regardless of whether the attendance at the program occurs before
12 or after the person qualifies for office.

13 (d) The executive director or the executive director's
14 designee shall provide to members of the board and to board
15 employees, as often as necessary, information regarding the
16 requirements for office or employment under this article, including
17 information regarding a person's responsibilities under applicable
18 laws relating to standards of conduct for state officers or
19 employees.

20 Sec. 21. SUNSET PROVISION. The Texas State Board of
21 Mechanical Industries is subject to Chapter 325, Government Code
22 (Texas Sunset Act). Unless continued in existence as provided by
23 that chapter, the board is abolished and this article expires
24 September 1, 2011.

25 Sec. 22. PENALTIES. (a) The board shall revoke or suspend
26 a license, endorsement, certification, or registration, probate a
27 license, endorsement, certification, or registration suspension, or

1 reprimand any person or entity regulated by the board for any
2 violation of this article or any regulatory statute administered by
3 the board or any rule adopted under this article or any rule
4 adopted under any regulatory statute administered by the board. A
5 violation of this article shall include but not be limited to:
6 obtaining a license through error or fraud; having recklessly,
7 wilfully, negligently, or arbitrarily violated municipal or other
8 political subdivision rules or ordinances regulating any work
9 governed by the board; making a substantial misrepresentation of
10 services to be provided or which have been provided; making any
11 false promise with intent to influence, persuade, or induce an
12 individual to contract for services. Grounds for suspension or
13 revocation of a license, endorsement, certification, or
14 registration due to suspected incompetence or wilful violation by a
15 licensee may be determined through retesting procedures.

16 (b) The board may assess an administrative penalty against a
17 person or entity who violates a provision of this article, a law
18 administered by the board, or a rule or order adopted by the board
19 as provided by this section.

20 (c) The penalty for each violation may be in an amount not
21 to exceed \$1,000. Each day a violation continues or occurs may be
22 considered a separate violation for purposes of penalty assessment.
23 In determining the amount of the penalty, the board shall consider:

24 (1) the seriousness of the violation, including the
25 nature, circumstances, extent, and gravity of the prohibited acts
26 and the hazard or potential hazard posed to the health or safety of
27 the public;

1 (2) the economic damage to property or the environment
2 caused by the violation;

3 (3) the history of previous violations;

4 (4) the amount necessary to deter future violations;

5 (5) efforts to correct the violation; and

6 (6) any other matter that justice may require.

7 (d) If the board proposes to assess an administrative
8 penalty, refuse a person's application for licensure, endorsement,
9 certification, or registration, or suspend or revoke a person's
10 license, endorsement, certification, or registration, the person is
11 entitled to a hearing, if requested, governed by the Administrative
12 Procedure Act, Chapter 2001, Government Code.

13 (e) The executive director or the executive director's staff
14 designee or staff designees shall oversee and conduct
15 investigations, conduct informal conferences, negotiate agreed
16 final orders, draft formal complaints, recommend administrative
17 penalties, and pursue cases involving violations of this article or
18 any regulatory statute administered by the board or any rule
19 adopted under this article or any rule adopted under any regulatory
20 statute administered by the board at the State Office of
21 Administrative Hearings. Proceedings for assessing administrative
22 penalties or for the refusal, suspension, or revocation of a
23 license, endorsement, certification, or registration are subject to
24 the Administrative Procedure Act, Chapter 2001, Government Code.

25 (f) Within the 30-day period immediately following the day
26 on which a board order assessing an administrative penalty to a
27 person or entity becomes final as provided by Section 2001.144,

1 Government Code, the person or entity charged with the penalty
2 shall:

3 (1) pay the penalty in full; or

4 (2) if the person files a petition for judicial review
5 contesting either the fact of the violation or the amount of the
6 penalty or contesting both the fact of the violation and the amount
7 of the penalty:

8 (A) forward the amount to the board for
9 placement in an escrow account; or

10 (B) in lieu of payment into escrow, post with
11 the board a supersedeas bond in a form approved by the board for
12 the amount of the penalty, the bond to be effective until all
13 judicial review of the order or decision is final.

14 (g) If a person charged is financially unable to either
15 forward the amount of the penalty for placement in an escrow
16 account or post a supersedeas bond for the amount of the penalty,
17 the person may satisfy the requirements of Subsection (f)(2) of
18 this section by filing with the board an affidavit sworn by the
19 person charged, stating that the person is financially unable to
20 either forward the amount of the penalty or post a bond.

21 (h) If the person charged fails to pay the penalty in full
22 as provided under Subsection (f)(1) of this section or forward the
23 money, post the bond, or file the affidavit as provided by
24 Subsection (f) or (g) of this section, the board may forward the
25 matter to the attorney general for enforcement.

26 (i) Judicial review of the order or decision of the board
27 assessing the penalty shall be under the substantial evidence rule

1 and shall be instituted by filing a petition with a district court
2 in Travis County, as provided by Subchapter G, Chapter 2001,
3 Government Code.

4 (j) If the penalty is reduced or not assessed by the court,
5 the board shall remit to the person charged the appropriate amount
6 plus accrued interest if the penalty has been paid or shall execute
7 a release of the bond if a supersedeas bond has been posted. The
8 accrued interest on amounts remitted by the board under this
9 subsection shall be paid at a rate equal to the rate charged on
10 loans to depository institutions by the New York Federal Reserve
11 Bank and shall be paid for the period beginning on the date the
12 penalty is paid to the board under Subsection (f) of this section
13 and ending on the date the penalty is remitted.

14 (k) An administrative penalty collected under Subsection (b)
15 of this section shall be deposited in the general revenue fund.

16 (l) A person commits an offense if the person violates this
17 article or any regulatory statute administered by the board or any
18 rule adopted under this article or any rule adopted under any
19 regulatory statute administered by the board, engages in activities
20 for which a license, endorsement, certification, or registration is
21 required without a license, endorsement, certification, or
22 registration issued under this article, or employs or utilizes an
23 unlicensed, unendorsed, uncertified, or unregistered person to
24 engage in activities for which a license, endorsement,
25 certification, or registration is required by this article. An
26 offense under this subsection is a Class C misdemeanor.

27 (m) A field representative of the board or, within the

1 jurisdiction of that municipality or water district, a municipal
2 inspector or water district inspector or other inspector authorized
3 to inspect work regulated by the board, may issue citations to
4 persons who engage in conduct described by Subsection (1) of this
5 section.

6 (n) Citations issued under Subsection (1) and Subsection (m)
7 of this section may be filed in a county justice court or municipal
8 court for adjudication of the offense or offenses.

9 Sec. 23. EFFECT OF FEDERAL REGULATIONS. The board shall
10 adopt rules for a law or program regulated by the board as
11 necessary to comply with any federal regulation that imposes
12 standards or requirements on that law or program.

13 SECTION 2. The Plumbing License Law (Article 6243-101,
14 Vernon's Texas Civil Statutes) is amended by adding Section 1A and
15 amending Section 3A to read as follows:

16 Sec. 1A. FUNCTIONS TRANSFERRED; BOARD ABOLISHED. (a) This
17 Act is administered by the Texas State Board of Mechanical
18 Industries in accordance with Article 9150, Revised Statutes. To
19 the extent of a conflict between this Act and Article 9150, Revised
20 Statutes, that article prevails.

21 (b) Any reference in this Act to the Texas State Board of
22 Plumbing Examiners means the Texas State Board of Mechanical
23 Industries.

24 (c) The Texas State Board of Plumbing Examiners is abolished
25 and the functions of that board are exercised by the Texas State
26 Board of Mechanical Industries.

27 Sec. 3A. CERTIFICATION RELATING TO RESIDENTIAL WATER

1 TREATMENT FACILITIES. (a) The executive director of the Texas
2 State Board of Mechanical Industries or the executive director's
3 ~~[Commissioner--of--Health-or-his]~~ designee shall certify persons as
4 being qualified for the installation, exchange, servicing, and
5 repair of residential water treatment facilities ~~[as-defined-by~~
6 ~~Subsection-(g)-of-Section-2-of-this-Act]~~. The Texas State Board of
7 Mechanical Industries ~~[Board-of-Health]~~ shall set standards for
8 certification to ensure the public health and to protect the public
9 from unqualified persons engaging in activities relating to water
10 treatment. Nothing in this section shall be construed to require
11 that persons licensed pursuant to this Act are subject to
12 certification under this section.

13 (b) ~~[Before-a-certificate-is-issued-or--renewed--under--this~~
14 ~~section,--an-applicant-or-holder-of-a-certificate-shall-be-required~~
15 ~~to-pay-a-fee-of-\$10-a-year.]~~ On receipt of the required fee, the
16 Texas State Board of Mechanical Industries ~~[Department-of-Health]~~
17 shall issue to a qualified person a certificate stating that the
18 person is qualified for the installation, exchange, servicing, and
19 repair of residential water treatment facilities. The Texas State
20 Board of Mechanical Industries ~~[Board-of-Health]~~ shall adopt rules
21 establishing classes of certificates, duration of certificates, and
22 fees.

23 (c) All fees received by the Texas State Board of Mechanical
24 Industries ~~[Department-of--Health]~~ under this section shall be
25 deposited in the State Treasury to the credit of the General
26 Revenue Fund.

27 SECTION 3. The Air Conditioning and Refrigeration Contractor

1 License Law (Article 8861, Vernon's Texas Civil Statutes) is
2 amended by adding Section 1A to read as follows:

3 Sec. 1A. FUNCTIONS TRANSFERRED; ADVISORY BOARD ABOLISHED.

4 (a) This Act is administered by the Texas State Board of
5 Mechanical Industries in accordance with Article 9150, Revised
6 Statutes. To the extent of a conflict between this Act and Article
7 9150, Revised Statutes, that article prevails.

8 (b) Any reference in this Act to the Texas Department of
9 Licensing and Regulation, the commissioner of licensing and
10 regulation, or the Air Conditioning and Refrigeration Contractors
11 Advisory Board means the Texas State Board of Mechanical
12 Industries.

13 (c) The Air Conditioning and Refrigeration Contractors
14 Advisory Board is abolished and the functions of that board and the
15 functions, under this Act, of the Texas Department of Licensing and
16 Regulation and the commissioner of licensing and regulation are
17 exercised by the Texas State Board of Mechanical Industries.

18 SECTION 4. Section 341.033(f), Health and Safety Code, is
19 amended to read as follows:

20 (f) A public drinking water supply may not be connected to a
21 sprinkling, condensing, cooling, plumbing, or other system unless
22 the connection is designed to ensure against a backflow or
23 siphonage of sewage or contaminated water into the drinking water
24 supply. Notwithstanding any other provision of this chapter, this
25 subsection is administered by the Texas State Board of Mechanical
26 Industries in accordance with Article 9150, Revised Statutes. To
27 the extent of a conflict between this chapter and Article 9150,

1 Revised Statutes, regarding the administration of this subsection,
2 Article 9150 prevails. Any reference in this chapter to the Texas
3 Natural Resource Conservation Commission, as it applies to this
4 subsection, means the Texas State Board of Mechanical Industries.

5 SECTION 5. Chapter 372, Health and Safety Code, is amended
6 by adding Section 372.0015 to read as follows:

7 Sec. 372.0015. FUNCTIONS TRANSFERRED. (a) This chapter is
8 administered by the Texas State Board of Mechanical Industries in
9 accordance with Article 9150, Revised Statutes. To the extent of a
10 conflict between this chapter and Article 9150, Revised Statutes,
11 that article prevails.

12 (b) Any reference in this chapter to the Texas Natural
13 Resource Conservation Commission means the Texas State Board of
14 Mechanical Industries.

15 SECTION 6. Chapter 34, Water Code, is amended by adding
16 Section 34.0015 to read as follows:

17 Sec. 34.0015. FUNCTIONS TRANSFERRED; COUNCIL ABOLISHED.
18 (a) This chapter is administered by the Texas State Board of
19 Mechanical Industries in accordance with Article 9150, Revised
20 Statutes. To the extent of a conflict between this chapter and
21 Article 9150, Revised Statutes, that article prevails.

22 (b) Any reference in this chapter to the Texas Natural
23 Resource Conservation Commission or the Texas irrigators advisory
24 council means the Texas State Board of Mechanical Industries.

25 (c) The Texas irrigators advisory council is abolished and
26 the functions of that board and the functions, under this chapter,
27 of the Texas Natural Resource Conservation Commission are exercised

1 by the Texas State Board of Mechanical Industries.

2 SECTION 7. (a) As soon as possible after the effective date
3 of this Act, the governor shall appoint the initial members of the
4 Texas State Board of Mechanical Industries in accordance with
5 Article 9150, Revised Statutes, as added by this Act.

6 (b) A person who is serving on the day immediately before
7 the effective date of this Act as a member of the governing body of
8 an agency abolished by this Act is eligible for appointment to the
9 Texas State Board of Mechanical Industries if the person meets the
10 requirements set forth in Section 2, Article 9150, Revised
11 Statutes, as added by this Act.

12 (c) In making the initial appointments, the governor shall
13 designate members to serve terms as follows:

14 (1) three members to serve for terms expiring February
15 1, 2001;

16 (2) three members to serve for terms expiring February
17 1, 2003; and

18 (3) three members to serve for terms expiring February
19 1, 2005.

20 (d) The Texas State Board of Mechanical Industries may not
21 take any action and is not created until the day after the date the
22 last appointee to the initial board takes office. On the date of
23 its creation, the board assumes its functions and:

24 (1) the Air Conditioning and Refrigeration Contractors
25 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
26 irrigators advisory council are abolished;

27 (2) the obligations, rights, contracts, records and

1 other property, and personnel of, and unspent money appropriated to
2 or for, the abolished boards and council or the governing body for
3 the laws or programs transferred to the new board under this Act
4 are transferred to the Texas State Board of Mechanical Industries;

5 (3) the rules of the abolished boards and council or
6 the governing body for the laws or programs transferred to the new
7 board under this Act are continued in effect as rules of the Texas
8 State Board of Mechanical Industries until superseded by rule of
9 the new board;

10 (4) the licenses, certificates, permits, or
11 registrations in effect that were issued by the abolished boards or
12 council or the governing body for the laws or programs transferred
13 to the new board under this Act are continued in effect as
14 licenses, certificates, permits, or registrations of the Texas
15 State Board of Mechanical Industries;

16 (5) a complaint or investigation pending before the
17 abolished boards or council or the governing body for the laws or
18 programs transferred to the new board under this Act is transferred
19 without change in status to the Texas State Board of Mechanical
20 Industries;

21 (6) a contested case pending before the abolished
22 boards and council or the governing body for the laws or programs
23 transferred to the new board under this Act is transferred to the
24 Texas State Board of Mechanical Industries and actions taken in the
25 proceeding are treated as if taken by the Texas State Board of
26 Mechanical Industries; and

27 (7) any reference in a law to the abolished boards or

1 council means the Texas State Board of Mechanical Industries.

2 (e) Regardless of the changes in law made by this Act, until
3 the date that the Air Conditioning and Refrigeration Contractors
4 Advisory Board, Texas State Board of Plumbing Examiners, and Texas
5 irrigators advisory council are abolished as provided by this
6 section, the boards and council continue in existence and shall
7 administer their functions under the law that governed the boards
8 and council before the effective date of this Act, and the prior
9 law is continued in effect for that purpose.

10 (f) The Texas State Board of Mechanical Industries shall
11 adopt rules under this Act not later than December 1, 1999.

12 SECTION 8. The following laws are repealed:

13 (1) Sections 4, 4a, 5A, 6, and 7, The Plumbing License
14 Law (Article 6243-101, Vernon's Texas Civil Statutes);

15 (2) Section 3A, Air Conditioning and Refrigeration
16 Contractor License Law (Article 8861, Vernon's Texas Civil
17 Statutes); and

18 (3) Section 34.003, Water Code.

19 SECTION 9. This Act takes effect September 1, 1999.

20 SECTION 10. The importance of this legislation and the
21 crowded condition of the calendars in both houses create an
22 emergency and an imperative public necessity that the
23 constitutional rule requiring bills to be read on three several
24 days in each house be suspended, and this rule is hereby suspended.

H.B. No. 2155

President of the Senate

Speaker of the House

I certify that H.B. No. 2155 was passed by the House on May 8, 1999, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2155 on May 27, 1999, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 2155 was passed by the Senate, with amendments, on May 26, 1999, by a viva-voce vote.

Secretary of the Senate

APPROVED: _____

Date

Governor

President of the Senate

Speaker of the House

I certify that H.B. No. 2155⁽¹⁾ was passed by the House on

May 8⁽²⁾, 1999, by a non-record vote;

and that the House concurred in Senate amendments to H.B. No. 2155
on May 27⁽³⁾, 1999, by a non-record vote.

Chief Clerk of the House

**** Preparation: CT47;

I certify that H.B. No. 2155⁽¹⁾ was passed by the Senate, with
amendments, on May 26⁽²⁾, 1999, by a
viva-voce vote.

Secretary of the Senate

APPROVED:

Date

Governor

**** Preparation: CT33;

76TH LEGISLATURE

COAUTHOR AUTHORIZATION

(please request your coauthors to sign this form
in lieu of the front or the back of the original bill)

For chief clerk use only

Bill or Resolution Number:

HB 2155

Ken Yarbrough

signature of primary author

REP. KEN YARBROUGH

printed name of primary author

3/3/99

Date

PERMISSION TO SIGN HB 2155 HAS BEEN GIVEN TO (check only one of the following):
(bill or resolution #)



ALL REPRESENTATIVES

THE FOLLOWING REPRESENTATIVE(S):

I authorize the Chief Clerk to include my name as a coauthor of the legislation indicated above:

A2120 Alexander	Date	A2600 Counts	Date	A2795 Farabee	Date
A2115 Allen	Date	A2605 Crabb	Date	A2810 Farrar	Date
A2105 Alvarado	Date	A2610 Craddick	Date	A2840 Flores	Date
A2135 Averitt	Date	A2615 Crownover	Date	A2920 Gallego	Date
A2160 Bailey	Date	A2645 Cuellar	Date	A2930 Garcia	Date
A2205 Berman	Date	A2635 Culberson	Date	A2940 George	Date
A2250 Bonnen	Date	A2670 Danburg	Date	A2935 Giddings	Date
A2275 Bosse	Date	A2620 Davis, John	Date	A2880 Glaze	Date
A2260 Brimer	Date	A2625 Davis, Yvonne	Date	A2985 Goodman	Date
A2265 Brown, Betty	Date	A2680 Delisi	Date	A2990 Goolsby	Date
A2270 Brown, Fred	Date	A3385 Denny	Date	A3005 Gray	Date
A2255 Burnam	Date	A2690 Deshotel	Date	A3000 Green	Date
A2300 Capelo	Date	A2705 Driver	Date	A3010 Greenberg	Date
A2400 Carter	Date	A2665 Dukes	Date	A3020 Grusendorf	Date
A2585 Chavez	Date	A2660 Dunnam	Date	A3030 Gutierrez	Date
A2480 Chisum	Date	A2650 Dutton	Date	A3035 Haggerty	Date
A2525 Christian	Date	A2770 Edwards	Date	A2695 Hamric	Date
A2520 Clark	Date	A2760 Ehrhardt	Date	A3160 Hardcastle	Date
A2435 Coleman	Date	A2775 Eiland	Date	A3170 Hartnett	Date
A2565 Cook	Date	A2785 Elkins	Date	A3345 Hawley	Date
A2595 Corte	Date	A2790 Ellis, Dan	Date	A3180 Heflin	Date

For chief clerk use only
Bill or Resolution Number: HR 2155

A3310 Hilbert	Date	A3715 Madden	Date	A4435 Shields	Date
A3250 Hilderbran	Date	A3750 Marchant	Date	A4445 Siebert	Date
A3275 Hill	Date	A2700 Maxey	Date	A4525 Smith	Date
A3270 Hinojosa	Date	A3665 McCall	Date	A4530 Smithee	Date
A3305 Hochberg	Date	A3650 McClendon	Date	A4550 Solis, Jim	Date
A3290 Hodge	Date	A3845 McReynolds	Date	A4560 Solis, Juan	Date
A3325 Homer	Date	A3840 Merritt	Date	A4505 Solomons	Date
A3320 Hope	Date	A3855 Moreno, Joe	Date	A4515 Staples	Date
A3315 Howard	Date	A3860 Moreno, Paul	Date	A4570 Swinford	Date
A3355 Hunter	Date	A3870 Morrison	Date	A4585 Talton	Date
A3360 Hupp	Date	A3865 Mowery	Date	A4605 Telford	Date
A3375 Isett	Date	A3885 Naishtat	Date	A4630 Thompson	Date
A3415 Janek	Date	A3890 Najera	Date	A4635 Tillery	Date
A3410 Jones, Charles	Date	A3895 Nixon, Joe	Date	A4650 Truitt	Date
A3405 Jones, Delwin	Date	A3900 Noriega	Date	A2730 Turner, Bob	Date
A3400 Jones, Jesse	Date	A3880 Oliveira	Date	A4685 Turner, Sylvester	Date
A3440 Junell	Date	A3886 Olivo	Date	A4690 Uher	Date
A3475 Keel	Date	A4010 Palmer	Date	A4695 Uresti	Date
A3480 Keffer	Date	A4180 Pickett	Date	A4720 Van de Putte	Date
A3470 King, Phil	Date	A4185 Pitts	Date	A4990 Walker	Date
A3465 King, Tracy	Date	A4200 Puente	Date	A4995 West, George "Buddy"	Date
A3485 Krusee	Date	A4210 Ramsay	Date	A5035 Williams	Date
A3450 Kuempel	Date	A4240 Rangel	Date	A5000 Wilson	Date
A3510 Laney	Date	A4245 Reyna, Arthur	Date	A5020 Wise	Date
A3520 Lengefeld	Date	A4236 Reyna, Elvira	Date	A5015 Wohlgemuth	Date
A3605 Lewis, Glenn	Date	A4250 Ritter	Date	A4980 Wolens	Date
A3600 Lewis, Ron	Date	A4370 Sadler	Date	A5005 Woolley	Date
A3615 Longoria	Date	A4380 Salinas	Date	A5025 Yarbrough	Date
A3620 Luna, Vilma	Date	A4420 Seaman	Date	A5040 Zbranek	Date

A BILL TO BE ENTITLED
AN ACT

Relating to the creation and operation of the Texas Board of Plumbing and Mechanical Work and the regulation of plumbing and mechanical laws and programs by that board; providing penalties.

MAR - 3 1999

Filed with the Chief Clerk

MAR - 8 1999

Read first time and referred to Committee on

Licensing & Administrative

Procedures

APR 15 1999

Reported favorably (~~unanimous~~)
(as substituted)

APR 26 1999

Sent to Committee on (Calendars)

~~(unanimous consent - Calendars)~~

MAY 07 1999

Read second time (comm. subst.) (~~amended~~); passed to third reading (~~failed~~) by a (non-record vote)~~(unanimous vote of _____ yeas, _____ nays, _____ present, not voting)~~Constitutional rule requiring bills to be read on three several days suspended (failed to suspend)
by a vote of _____ yeas, _____ nays, _____ present, not voting

MAY 08 1999

Read third time (~~amended~~); finally passed (~~unanimous consent~~) by a (non-record vote)~~(unanimous vote of _____ yeas, _____ nays, _____ present, not voting)~~

MAY 10 1999

Engrossed

MAY 11 1999

Sent to Senate

Sharon Carter

CHIEF CLERK OF THE HOUSE

OTHER HOUSE ACTION:

MAY 10 1999

Received from the House

MAY 10 1999

Read and referred to Committee on

STATE AFFAIRS

MAY 12 1999

Rereferred to ADMINISTRATION

MAY 14 1999

Reported favorably

Reported adversely, with favorable Committee Substitute; Committee Substitute read first time

Ordered not printed

Laid before the Senate

MAY 26 1999

Senate and Constitutional Rules to permit consideration suspended by (~~unanimous consent~~)

(20 yeas, 3 nays)

MAY 26 1999

Read second time, _____, and passed to third reading by (unanimous consent)

(a viva voce vote)

(_____ yeas, _____ nays)

MAY 26 1999

Senate and Constitutional 3 Day Rules suspended by a vote of 26 yeas, 3 nays

MAY 26 1999

Read third time, _____, and passed by (a viva voce vote)

(_____ yeas, _____ nays)

MAY 26 1999

Returned to the House

L. J. King

SECRETARY OF THE SENATE

OTHER SENATE ACTION:

MAY 26 1999

Returned from the Senate (~~unanimous~~)
(with amendments)

MAY 27 1999

House concurred in Senate amendments by a (non-record vote)

(~~record vote of~~ _____ yeas, _____ nays, _____ present, not voting)

House refused to concur in Senate amendments and requested the appointment of a conference committee by a (non-record vote) (record vote of _____ yeas, _____ nays, _____ present, not voting)

House conferees appointed: _____, Chair; _____,

_____, _____, _____

Senate granted House request. Senate conferees appointed: _____, Chair;

_____, _____, _____

Conference committee report adopted (rejected) by the House by a (non-record vote)
(record vote of _____ yeas, _____ nays, _____ present, not voting)

Conference committee report adopted (rejected) by the Senate by a (viva voce vote)
(record vote of _____ yeas, _____ nays)

99 MAY 27 AM
HOUSE OF REPRESENTATIVES

99 APR 25 PM 9:57
HOUSE OF REPRESENTATIVES